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No.

2359 /

IN THE
United States Circuit Court of Appeals
NINTH CIRCUIT

ROBERT M. BETTS, Receiver of the Cornucopia Mines
Company of Oregon,

Plaintiff in Error,

vs.

JOHN L. BISHER, Jr., by JOHN L. BISHER, his
Guardian,

Defendant in Error.

Writ of Error to the District Court of the United
States for the District of Oregon.

TRANSCRIPT OF RECORD.

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J. D. MONCKTON,
CLERK.

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**Names and Addresses of Attorneys
upon this Writ:**

For Plaintiff in Error:

Emmett Callahan,	Spalding Bldg., Portland, Oregon
Smith & Littlefield,	Corbett Bldg., Portland, Oregon

For Defendant in Error:

Boothe & Richardson,	Portland, Oregon
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INDEX.

	Page
Answer.....	7
Assignments of Error.....	374
Attorneys, Names and Addresses of.....	A
Bill of Exceptions.....	25
Bond on Writ of Error.....	394
Citation on Writ or Error.....	399
Complaint.....	1
Defendant's Evidence.....	144
Defendant's Exhibit "G"—Lease.....	358
Evidence, Plaintiff's.....	40
Evidence, Defendant's.....	144
Exceptions, Bill of.....	25
Instructions of the Court to Jury.....	338
Instructions Requested by Defendant.....	33
Judgment Entry.....	24
Motion for a Directed Verdict.....	26
Motion for a New Trial.....	390
Motion for a Nonsuit.....	266
Names and Addresses of Attorneys.....	A
Order Allowing Writ of Error.....	393
Order Certifying Up Original Exhibits.....	400
Order Enlarging Time to File Transcript.....	400
Order Overruling Motion for a Directed Verdict	27
Order Settling and Allowing Bill of Exceptions	39
Petition for Writ of Error.....	373
Plaintiff's Evidence.....	40
Reply.....	17
Testimony.....	40

	Index.	Page
TESTIMONY ON BEHALF OF PLAINTIFF:		
BISHER, Jr., JOHN.....		41
Cross-examination....		60,65
Direct Examination (Continued)....		61
Redirect Examination.....		90
BISHER, MRS. JOHN.....		134
Cross-examination....		136
KENNEDY, L. H.....		121
Cross-examination.....		125
PANTER, LAWRENCE....		140
Cross-examination		142
SLOPER, L. W.....		104
Cross-examination....		107
Redirect Examination.....		119
Recross-examination.....		121
SLOPER, L. W. (Recalled).....		126
Cross-examination..		128
Redirect Examination.....		133
SMITH, ALBERT.....		102
TAYLOR, DR. FRANK M.....		92
Cross-examination		99
Redirect Examination.....		101
TESTIMONY ON BEHALF OF DEFENDANT:		
BETTS, ROBERT M.....		302
Cross-examination.....		320
Examination by the Court.....		324
Cross-examination Resumed		325
Redirect Examination.....		332

Index.

Page

TESTIMONY ON BEHALF OF DEFEND-

ANT—Continued:

BISHER, JR., JOHN—Recalled in Re-	
buttal.....	334
BUXTON, C. A.....	254
Cross-examination....	275
Redirect Examination.....	287
Recross-examination.....	289
GRAY, MRS. KITTIE B.....	300
Cross-examination.....	302
HARBERT, W. H.....	144
Cross-examination.....	174
Redirect Examination....	198
Recross-examination....	200
HULL, FRANK A.....	222
Cross-examination.....	232
Redirect Examination.....	238
Recross-examination.....	239
LADD, G. R.....	291
Cross-examination....	298
MYERS, F. E.....	201
Cross-examination.....	214
WALSH, DR. J. P.....	240
Cross-examination....	248
Writ of Error.....	397

*In the District Court of the United States for the
District of Oregon.*

Be it Remembered, that on the 12 day of October, 1912, there was duly filed in the District Court of the United States for the District of Oregon, a Complaint, in words and figures as follows, to wit:

[Complaint.]

*In the District Court of the United States for the
District of Oregon.*

JOHN L. BISHAR, Jr., by John L. Bisher, his guardian ad litem,

Plaintiff,

vs.

THE CORNUCOPIA MINES COMPANY OF OREGON, a corporation, and ROBERT M. BETTS, Receiver of said Cornucopia Mines Company of Oregon,

Defendants.

The plaintiff, for cause of action against the defendants, alleges:

I.

That during all the times herein mentioned, the above named defendant, the Cornucopia Mines Company of Oregon, has been and now is a corporation organized under and by virtue of the laws of the State of Maine, and has duly qualified to transact business in the State of Oregon, and is now qualified to transact business within the State of Oregon.

II.

That on or about the 21st day of December, 1911, under and by virtue of a petition of the Hamilton Trust Company, plaintiff, vs. Cornucopia Mines Company of Oregon and Valentine Laubenheimer and S. W. Holmes, defendants, in this Court, then the Circuit Court of the United States, for the District of Oregon, the above named Robert M. Betts was appointed Receiver of the said Cornucopia Mines Company of Oregon, with the usual powers of receivers, and thereupon said Robert M. Betts thereafter and on the 2nd day of January, 1912, filed his bond as such receiver, which bond was approved by the Court, whereupon said receiver became in the possession and management of all the property of said corporation, and he has ever since been and now is the duly appointed, qualified and acting receiver of the said Cornucopia Mines Company of Oregon, and is in possession of all the properties of said corporation of whatsoever kind and nature. That said receiver upon his appointment was duly authorized to carry on the mining business of said Cornucopia Mines Company of Oregon in improving and developing its properties in Baker County, Oregon, and was from and after his appointment in actual possession of all the property of said corporation, and in the actual management and conduct of its said business, and said receiver has not been discharged by any order of the Court and is still the duly appointed, qualified and acting receiver of said corporation.

III.

The plaintiff further alleges that on or about the 28th day of July, 1912, he was in the employ of the defendants as a common laborer and was under the control of a foreman of the defendants, whose duty it was to direct the plaintiff in and about his employment. That at the same time the defendants were maintaining three heavy copper wires for the transmission and use of electricity of a dangerous voltage strung upon arms or supports fastened upon poles about twenty-five feet above the ground, leading from the power house to the defendants' stamp mill.

IV.

That the defendants unlawfully and negligently constructed and maintained the aforesaid transmission wires of dangerous voltage by failing to insulate the same at the poles and arms upon which they rested, and where the employees of the defendants were liable to come in contact therewith, and unlawfully and negligently strung said dangerous voltage wires at an insufficient distance from the poles and supports to permit repairers to freely engage in the work of repairs without danger of injury therefrom, and unlawfully and negligently constructed, maintained and mingled dead wires strung upon the same support with said live wires, and unlawfully and negligently failed to designate the arms or supports bearing said live wires by a corol or other designation, and unlawfully and negligently failed to use any device, care or precaution to protect the safety of life and limb of the

employees of the defendants in the use of repair of said dangerous voltage wires.

V.

That the defendants knew or should have known by the exercise of ordinary care that said wires were so unlawfully and defectively constructed.

VI.

That on or about said 28th day of July, 1912, the defendants were engaged in working and developing the mining properties of said Cornucopia Mines Company of Oregon in Baker County, Oregon, and were using the transmission line above mentioned, and defectively constructed, as aforesaid, to propel the machinery of their stamp mill.

VII.

That while the plaintiff was working for the defendants as a common laborer, as aforesaid, he was ignorant of the use of electricity and inexperienced in the art or construction of electric wires or electric currents and in handling wires charged with electricity, and on said date the defendants, knowing that the plaintiff was ignorant of the use of electricity and inexperienced in the art or construction of electric wires or electric currents and in the handling of wires charged with electricity, negligently and carelessly directed the plaintiff to assist a foreman of the defendants in placing insulators on said alternating current of live wires at a place where they were defectively constructed and maintained, as aforesaid.

VIII.

That in order to perform said work, the defendants

negligently and carelessly required the plaintiff, under the direction of their foreman, to climb the poles sustaining said live wires using climbers and without any ladder or other apparatus to sustain his weight, and at the same time assist his foreman in lifting with his hand one of said live wires while the foreman placed the insulator on the arm carrying the same, and negligently and carelessly failed to turn off the electric current from said live wires while the plaintiff was so assisting the foreman, and negligently and carelessly failed to provide any means to protect the plaintiff from being injured by said live wires while performing his said work.

IX.

That while the plaintiff was thus assisting the foreman of the defendants, and while sustaining his own weight underneath said line of live wires by the use of climbers, and under the direction of the foreman of the defendants assisted the said foreman in lifting one of said live wires and held the same in his hand while the foreman was endeavoring to place an insulator on the arm carrying the same, and while so holding said live wire, without any negligence on his part and without knowing that it was dangerous so to do, the plaintiff received an electric shock, whereby an electric current from said live and deadly wire passed through his body with such force and violence that he was so charged with electricity that he became paralyzed and helpless and unable to free himself from said wire, and said electric current continued

to pass through his body and to burn his arms and hands until he was released by his foreman, and on account of such electric shock and the burning of his hands and body, the plaintiff became sick and sore so that he was confined in a hospital for many weeks where he was required to receive medical and surgical treatment, and on account of said electric shock it became necessary to amputate the plaintiff's right arm near the elbow and a portion of his left forearm is torn away to such an extent that the flesh, sinew and bones of his left arm are so badly crippled, burned and torn away that his left arm is now almost totally destroyed, and the plaintiff has lost his right arm thereby and the entire use of his left arm and hand, and he has become permanently injured and crippled for life and unable to perform any sort of manual labor, and has during all of said time suffered great physical pain and mental agony and will suffer physical pain and mental agony for the remainder of his life.

X.

That at the time the plaintiff was injured, as afore said, he was eighteen years of age and was a strong and healthy young man, capable of earning not less than \$3.00 per day, and on account of the negligence and carelessness of the defendants and the injuries so received, the plaintiff has been damaged in the sum of Fifty Thousand Dollars.

WHEREFORE, the plaintiff prays for judgment against the defendants for the sum of Fifty Thousand

Dollars, and for his costs and disbursements herein.

(S) BOOTHE & RICHARDSON,
Attorneys for Plaintiff.

[Endorsed]: Complaint. Filed Oct. 12, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 29 day of January, 1913, there was duly filed in said Court, an Answer, in words and figures as follows, to wit:

[Answer.]

(Title.)

Comes now the defendant Robert M. Betts, Receiver of said Cornucopia Mines Company of Oregon, and for his answer to the Complaint filed herein admits, denies and alleges as follows:

I.

This defendant admits that during all the times mentioned in the complaint it was and now is a corporation organized under the laws of the State of Maine, and has complied with the laws of the States of Maine and Oregon so as to entitle it to do business in said States.

II.

This defendant admits that during all the times and dates mentioned in the complaint herein he was the duly appointed, qualified and acting Receiver of "Cornucopia Mines Company of Oregon", as alleged by plaintiff in the second count of his complaint; except as herein and hereafter in this answer denied and alleged to the contrary.

III.

This defendant denies that on or about the 28th day of July, 1912, that the plaintiff was in the employ of the defendant as a common laborer and under the control of a foreman of the defendant as such receiver of the Cornucopia Mines Company of Oregon; denies that on or about the 28th day of July, 1912, the defendant as such receiver of Cornucopia Mines Company of Oregon, maintained three heavy copper wires for the purpose of transmitting electricity of a high and dangerous voltage upon supports and arms attached and fastened to poles about twenty-five feet above the surface of the ground along a line leading from an electric power plant to the stamp mill at defendant's mines.

IV.

This defendant denies that as said receiver he maintained, kept or constructed electric wires strung upon poles of a high and dangerous voltage uninsulated whereby persons in the employ of defendant were liable to come in contact with the same, and be maimed or injured thereby; defendant further denies that he as such receiver of Cornucopia Mines Company of Oregon, did negligently and unlawfully string dangerous wires of high and dangerous voltage upon poles without proper supports, and at insufficient distances from each other that would not freely permit any person employed or engaged in repairing such electric wires freely and without danger of injury therefrom; denies further that he as said receiver did

maintain and mingle dead wires strung upon supports with live wires charged with electric current, or that he negligently and unlawfully failed to designate the poles, arms, or supports bearing live electric wires by a color or warning designation; denies further that he as said receiver did unlawfully and negligently fail and refuse to employ any device, care and precaution to safeguard and protect the life and limbs of employees engaged in mending or repairing said alleged dangerous high voltage electric wires as described and alleged in the IV count of plaintiff's complaint.

V.

This defendant denies that it was charged with knowledge or that he should have known as such receiver of Cornucopia Mines Company of Oregon, or that by ordinary care that live electric wires were unlawfully, wrongfully and defectively constructed and used in operating and developing said Cornucopia Mines of Oregon, in transmitting electric power over a transmission line from the electric power plant of said Company to its mines and stamp mill; therefore defendant denies that he had such knowledge by the exercise of ordinary care or otherwise that said electric wire were in anywise defectively constructed.

VI.

Defendant denies that on or about the 28th day of July, 1912, that the Cornucopia Mines Company of Oregon, or that he as Receiver of Cornucopia Mines Company of Oregon, was engaged in working, developing, or operating the Cornucopia Mines Com-

pany of Oregon, in Baker County, Oregon; or that said Company or its said receiver was using a transmission electric line of a defective character or otherwise in operating or running the Stamp Mill of said Company.

VII.

This defendant denies that the plaintiff was employed as a common laborer by him as Receiver of Cornucopia Mines Company of Oregon, or by a foreman of the defendant as a common laborer or in any capacity whatsoever in or about the construction of or the placing of insulators on alternating current of live electric wires which were maintained and defectively constructed.

VIII.

Defendant denies that he employed, ordered or directed the plaintiff by or through a foreman of defendant to work about or upon any poles, electric wires charged with live current of electricity, or to carry or place upon an arm any material, insulator, or electric device or part upon any electric works or electric construction being made or operated by defendant, by defendant's order, or by or through a foreman of defendant.

IX.

The defendant for answer to the IX paragraph or count of plaintiff's complaint denies that the plaintiff was engaged or employed by the defendant or under the control or guidance of defendant foreman in or about any construction work upon an electric trans-

mission line in repairing or placing insulators upon arms used for carrying electric wires; denies that plaintiff was maimed, injured, or suffered any bodily harm or injury from live electric wires charged with electric current by coming in contact with same while in the employment of defendant, or under the control or guidance of defendant's foreman; defendant denies that plaintiff as an employee of defendant was injured, maimed or crippled for life while in the employment of defendant as a common laborer; denies that defendant has suffered great physical pain and agony from any injury received by any act, deed, commission or omission caused to plaintiff by the defendant.

X.

Defendant denies that the plaintiff suffered damages in the sum of \$50,000.00, or been damaged in the sum of \$50,000.00 or any other sum by, through or on account of the negligence and carelessness of defendant toward plaintiff in any manner whatsoever.

XI.

The defendant alleges that he has no knowledge or information sufficient to form a belief whether or not the plaintiff as alleged in the complaint is the guardian ad litem; therefore defendant denies that John L. Bisher is the Guardian ad litem of the plaintiff.

XII.

And the defendant denies each and all of the other averments contained in said complaint not herein either specifically admitted or denied.

XIII.

Defendant denies that Cornucopia Mines Company of Oregon, one of the defendants named in the complaint, was at the times and dates set forth in the complaint, and at the times and dates of the alleged injury and grievances described in the complaint the owner, or in the possession of the Cornucopia Mines, Stamp Mill, Electric Power plant or Poles carrying the transmission wires and electric power from the power house to the said Stamp Mill, or in control, possession, or owner of said described electric power plant which plaintiff alleges caused the injury complained of in the third paragraph of the complaint:

2. Defendant Robert M. Betts, Receiver of said Cornucopia Mines Company, of Oregon, denies that he was in possession, or operating, or developing the said Cornucopia Mines, Power plant, Electric transmission line from said power plant to said Stamp Mill at the time and date of the alleged injury to plaintiff, as set forth and alleged by plaintiff in the complaint.

3. Defendant denies that Cornucopia Mines Company of Oregon, or that he as Receiver of said Cornucopia Mines Company, was the owner or in possession of, or operating and developing said mines and running or using the electric power plant either in whole or in part upon or about the date and time when plaintiff alleges in his complaint he was injured and maimed by an electric current; denies that said Cornucopia Mines Company of Oregon, or Robert M. Betts, as said receiver was operating said electric power

plant and transmission line upon which plaintiff alleges in his complaint he was injured and maimed on or about the 28th day of July, 1912.

Defendant denies that the plaintiff was in the employment of the defendant as a common laborer or in any other capacity on or about the 28th day of July, 1912, the date upon which he alleges he was maimed and injured in the manner described in the complaint.

For further and separate defenses, defendant alleges, and says:

That the Cornucopia Mines, stamp mill, electric power generating plant and all other property described in plaintiff's complaint, and the particular poles, the three heavy copper wires used for transmitting electric power from said power plant to the stamp mill of Cornucopia Mines Company's mines at or near the town of Cornucopia, Baker County, Oregon, were in the possession and control of Robert M. Betts, as a lessee thereof under a written and duly executed lease from Cornucopia Mines Company of Oregon a corporation as lessor to Robert M. Betts, lessee, said lease being dated and executed by and between said lessor and lessee, on the 9th day of November, 1911; to run for the period of one year from the first day of November, 1911, to noon of the 1st day of November, 1912, when it expired by its terms and limitation; that said lease as aforesaid was duly recorded in the office of the Clerk and Recorder of Baker County, Oregon, on the 28th day of November, 1911, in Book

of "L. & A." Vol. G, page 270, at 10:30 o'clock A. M. on said day;

2. That on or about the 28th day of July, 1912, and for some time previous thereto the plaintiff was an employee of Robert M. Betts, lessee of Cornucopia Mines Company of Oregon, his duties and labor consisted in carrying insulators and pins and certain paraphernalia used in repairing electric appliances and copper wires used in transmitting electric current; plaintiff's sole duty was to go from pole to pole as the work progressed and hand such insulators and tools to the lineman engaged in repairing said transmission line;

3. That when said plaintiff was injured as alleged in the complaint on the 28th day of July, 1912, as an employee of Robert M. Betts, lessee of Cornucopia Mines Company of Oregon, his duties did not require that he climb poles or go to any place or to come into contact with live or dead electric wires, and therefore the injury alleged to have been suffered by plaintiff in his complaint herein was consequent upon, and due to plaintiff's own voluntary carelessness and negligence, and not to that of the defendant Robert M. Betts, Receiver of said Cornucopia Mines Company of Oregon, or to Robert M. Betts, lessee of Cornucopia Mines Company of Oregon.

Defendant's further defense:

Defendant alleges and says, that the copper transmission wires complained of in the complaint herein, were strung and placed at a sufficient distance from

each other so as to permit repairs thereon to be made freely and safely by the lineman or repair man while so engaged in repairing said transmission wires; that defendant employed and provided every necessary device and precaution to protect its employees, and the plaintiff while engaged in or about the said transmission wires in repairing same; that said transmission wires as described in the complaint filed herein were in plain view of the plaintiff when he entered into the services of Robert M. Betts, lessee of Cornucopia Mines Company of Oregon, and so remained during all the time of his employment, and, with full notice and knowledge of the construction of said transmission wires and electric power plant; that plaintiff had full personal knowledge of the condition, and operation of said electric power plant and said transmission line, that plaintiff voluntarily entered upon the work which he was employed to do, and continued therein until the time of his accident without objection or complaint.

Further answering defendant says and alleges:—

4. That as a matter of fact and truth, that while said plaintiff was in the service of Robert M. Betts, lessee of Cornucopia Mines Company of Oregon, mines and machinery, on the 28th day of July, 1912, and for some time previous thereto, and at the time mentioned in the complaint he was an experienced electrician who had full knowledge of the work in which he was engaged and employed and of the means, instruments, tools, materials, plans and methods employed in the

performance of such work mentioned in the complaint and of the character of his said employment and he voluntarily assumed the risks and danger of accident incident to that employment;

That the accident described in the complaint resulting in plaintiff's injury arose from and was caused by the voluntary act of the plaintiff on his own motion in climbing the pole upon which the electric wires mentioned in the complaint were fastened and strung, plaintiff having full knowledge and notice that it was no part of his employment to climb said pole or poles, and that said plaintiff in his said employment knew that it was no part of his duty and employment to climb said pole as mentioned in the complaint, and that in so doing he voluntarily assumed such risk and hazard outside of his regular employment.

Defendant further answering the complaint, says and alleges:

That the Statute, Chapter 3, on page 16 of the General Laws of the State of Oregon, 1911, from Sections 1 to 7 inclusive known as the Employers' liability initiative law, upon which plaintiff founds and predicates his right of action in his complaint herein, is unconstitutional and void; in that it deprives the defendant of its constitutional right to set up its defense of contributory negligence against plaintiff herein under the laws and constitution of the United States of America.

Wherefore, having fully answered the complaint, defendant prays that plaintiff take nothing by this

action and that defendant have judgment against plaintiff for its costs and disbursements.

EMMETT CALLAHAN.

[Endorsed]: Answer. Filed Jan. 29, 1913.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 5 day of February, 1913, there was duly filed in said Court, a Reply, in words and figures as follows, to wit:

[Reply.]

(Title.)

Now comes the plaintiff in the above entitled action and replies to the answer of the defendant, Robert M. Betts, Receiver of said Cornucopia Mines Company of Oregon, as follows:

I.

He denies that the Cornucopia Mines stamp mill, electric power and generating plant, or all other, or any property described in the plaintiff's complaint, or the particular poles, or any poles, or the three heavy copper wires used for transmitting electric power from said plant to the stamp mill of the Cornucopia Mines, or any other copper wires so used at or near the town of Cornucopia, Baker County, Oregon, or elsewhere, or that any other properties of said Cornucopia Mines Company of Oregon, were in the possession or control of Robert M. Betts, as lessee thereof under a written lease, or any other lease, executed from the Cornucopia Mines Company of Oregon, a

corporation, or otherwise, to Robert M. Betts.

II.

He denies any knowledge or information sufficient to form a belief as to whether or not said lease was dated the 9th day of November, 1911, or any other date, and denies any knowledge or information sufficient to form a belief as to whether or not such lease was to run for a period of one year from the 1st day of November, 1911, to the 1st day of November, 1912, or for any other period of time; and denies any knowledge or information sufficient to form a belief as to whether or not said lease was recorded in the office of the Clerk or Recorder of Baker County, Oregon, or elsewhere, on the 28th day of November, 1911, or at any other time in Book "L. & A.", Vol. "G", page 270, or elsewhere.

III.

Denies that on or about the 28th day of July, 1912, or at any other time, or any time previous thereto, the plaintiff was in the employ of one Robert M. Betts, lessee of Cornucopia Mines Company of Oregon, and denies that he was in the employ of the said Robert M. Betts, in any other manner than that of Robert M. Betts, Receiver, as in the complaint herein set forth.

He denies that his duties and labor consisted in carrying insulators and pins and certain paraphernalia in repairing electric appliances and copper wires used in transmitting electric current, or that his duties consisted in carrying any other pins or paraphernalia

used in repairing electric appliances or copper wires, or for any other purposes, and denies that he was employed in any other manner than that set forth in his complaint herein. He denies that his sole duty was to go from pole to pole, as the work progressed, or otherwise, or hand such insulators or tools or other articles to the lineman or other persons engaged in repairing said transmission line, and denies that the duty of the plaintiff was other than that set forth in his complaint filed herein.

IV.

He denies that when the plaintiff was injured, as alleged in the complaint, he was an employee of Robert M. Betts, lessee of Cornucopia Mines Company of Oregon, but avers, as heretofore stated and in said complaint alleged, that the plaintiff was in the employ of Robert M. Betts as Receiver of the Cornucopia Mines Company of Oregon, and not otherwise. He denies that his duties did not require him to climb poles or to go to any place, or to come into contact with live or dead electric wires, and denies that the injuries received by him, as set forth in the complaint, were due to his own voluntary or other carelessness or negligence, and denies that his injuries so received occurred in any other manner than that set forth in the complaint herein.

V.

He denies that the copper transmission wires complained of in the complaint, were strung or placed at a safe distance from each other so as to permit re-

pairs thereon to be made freely or safely by the line-man or repairman so engaged in repairing said transmission wires. He denies that the defendant employed or provided every necessary device or precaution to protect its employees or the plaintiff while engaged in or about said transmission wires, or any of them, in repairing the same; he denies that he had full notice or knowledge, or any notice or knowledge, of the construction of said transmission wires or electric power plant, or any part thereof.

He denies that he had full personal knowledge, or any knowledge whatever of the condition of operating said electric power plant or said transmission line, and denies that the plaintiff voluntarily entered upon the work which he was employed to do, or that he entered upon said work in any other manner except as an inexperienced laborer to perform such duties as should be required of him by the defendant, and denies that he continued said employment without objection or complaint.

VI.

The defendant denies that he was in the service of Robert M. Betts, lessee of the Cornucopia Mines Company of Oregon, or otherwise than as hereinbefore stated and in the complaint alleged, to wit: That he was in the employ of Robert M. Betts as Receiver of the Cornucopia Mines Company of Oregon, and not otherwise, and denies that on the 28th day of July, 1912, or at any other time, he was an experienced electrician, or had full or any knowledge of the work

in which he was employed, or of the means, instruments, tools, materials, plans or methods employed in the performance of the work mentioned in the complaint, or the character of his said employment, and avers that he performed such services as he was directed to perform by the foreman of the defendant and not otherwise, and denies that he voluntarily or at all assumed the risk or danger of accident incident to that employment.

VII.

He denies that the injury resulting to the plaintiff, as described in the complaint, arose from or was caused by the voluntary act of the plaintiff, or on his own motion in climbing the pole upon which the electric wires mentioned in the complaint were fastened or strung, and denies that said injury arose from any other manner than that of the negligence of the defendant, as set forth in the complaint; and denies that the plaintiff had knowledge or notice that it was no part of his employment to climb said pole or poles, but avers that he was directed to climb said poles by the foreman of the defendant in his said employment.

The plaintiff denies that he knew that it was no part of his duty or employment to climb said pole, as mentioned in the complaint, but avers that it was his duty to climb the same, and that he did so climb same under the direction of the defendant, as set forth in the complaint, and not otherwise, and denies that in so doing, or otherwise, he voluntarily assumed such risk or hazard outside of his regular employ-

ment, and denies that he voluntarily assumed any risk or hazard, either inside or outside of his employment, and avers that he was inexperienced in said business and performed such work under the direction of the foreman of the defendant, and not otherwise.

VIII.

He denies any knowledge or information sufficient to form a belief as to whether or not the Statute, Chapter 3, page 16 of the General Laws of the State of Oregon, 1911, from Section I to VII inclusive, known as the "Employers Liability Initiative Law", or any part of said law, or any other law upon which the plaintiff founds or predicates his right of action, is unconstitutional or void, and denies any knowledge or information sufficient to form a belief as to whether or not said law, or any other law, deprives the defendant of its constitutional or other right to set up its defenses of contributory negligence or any other defense under the laws of the Constitution of the United States of America, or under any other laws.

Further replying to that portion of defendant's answer wherein the said Robert M. Betts pretends to have been conducting the business of the Cornucopia Mines Company of Oregon as lessee of said properties, the plaintiff alleges that on the 21st day of December, 1911, the said Robert M. Betts was appointed Receiver of all the properties of the Cornucopia Mines Company of Oregon in a cause in this court entitled "Hamilton Trust Company, plaintiff, vs. The Cornu-

copia Mines Company, of Oregon, a corporation, and Valentine Laubenheimer, and S. W. Holmes, respondents", and he was by said order authorized and directed to take immediate possession of all and singular the real and personal property of said Cornucopia Mines Company of Oregon, wherever situated or found, and to continue the operation of said mining and other property, and every part and portion thereof as heretofore operated, and to preserve the said property in proper condition and keep same in repair, and to employ such persons and make such payments and disbursements as may be needful and proper in doing so.

That the said Robert M. Betts duly qualified to act as Receiver of the property of the Cornucopia Mines Company of Oregon, and to operate the same, and to employ men in the operation of said mining company's property, and that thereafter the plaintiff was employed by the said Robert M. Betts as Receiver of said corporation, and it was while the said Robert M. Betts was so conducting said business as receiver that plaintiff was injured as set forth in the complaint.

WHEREFORE, the plaintiff asks for judgment as prayed for in the complaint.

BOOTHE & RICHARDSON,
Attorney for Plaintiff.

[Endorsed]: Reply. Filed Feb. 5, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on Friday, the 11 day of April, 1913, the same being the 35 Judicial day of the Regular March, 1913, Term of said Court; Present: the Honorable CHAS. E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Judgment Entry.]

*In the District Court of the United States for the
District of Oregon.*

No. 5784

JOHN BISHER, Jr.

vs.

CORNUCOPIA MINES CO.

This cause came on regularly for further trial at this time, pursuant to continuance, jury and attorneys for respective parties present as heretofore; whereupon defendant moves the Court to direct a verdict in favor of the defendant which said motion having been duly argued and submitted, after due consideration, it is Ordered that said motion be and the same hereby is overruled and thereupon after argument of counsel for respective parties and instructions of the court the jury retire to consider of their verdict and thereupon said jury having agreed return into court their verdict as follows "We, the jury, duly sworn and impanelled in the above entitled action do find for the plaintiff, and against Robert M. Betts, the Receiver of the Cornucopia Mines Company of Oregon, the de-

fendant, and assess plaintiff's damages in the sum of Twelve Thousand Five hundred dollars. \$12500.00. E. C. Mears, Foreman," which said verdict is received by the Court and ordered filed and thereupon it is considered, ordered and adjudged that said plaintiff John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, have and recover of and from the defendant, R. M. Betts, the Receiver of the Cornucopia Mines Company of Oregon, the sum of Twelve Thousand five hundred dollars (\$12500.00) together with his costs and disbursements herein taxed at \$282.70.

And afterwards, to wit, on the 9 day of September, 1913, there was duly filed in said Court, a Bill of Exceptions in words and figures as follows, to wit:

[Bill of Exceptions.]

(Title.)

Be it Remembered, That at the trial of this cause on the day of April, 1913, Honorable Charles E. Wolverton, presiding, both parties appearing by counsel. A jury was duly impanelled and sworn according to law to try the case and thereupon the plaintiff, to sustain the issues upon his part, offered the testimony of the following witnesses as its evidence in chief and rebuttal:

(Evidence in Chief, pages 40 to 144.—Rebuttal pages 334 to 336 of this Record.)

At the close of the evidence in chief offered by the plaintiff, the counsel for the defendant moved the court for a non-suit in this case, submitting the same

and the reasons therefor in words and figures following:

“The defendant moves for a non suit, upon the ground that the evidence of the plaintiff and his witnesses does not show any negligence of the defendant whatsoever. It shows that the plaintiff does not know how this injury occurred, and the facts of the injury are left to inference.

COURT: I will overrule the motion. You may proceed with your testimony.

Mr. SMITH: We will note an exception, your Honor.”

(Trans. tes. 91)

The defendant, to sustain the issues upon its part, then, through its counsel, offered the testimony of the following witnesses as its evidence in full.

(See pages 144 to 334 of this Record.)

This was all the evidence in the case and at its conclusion, the defendant, Robert M. Betts, receiver, renewed its motion by dictation same to the official stenographer reporting the case, for the court to direct a verdict in its favor, and after the arguments of counsel, both the plaintiff and defendant, to the court upon said motion, the said motion was by the court overruled and which action of the court in overruling the same, the defendant then and there, by permission of the court, excepted; said motion was in words and figures as follows:

“Mr. SMITH: Before proceeding, if your Honor please, to get the record, we desire to interpose a mo-

tion for a directed verdict. The defendant at this time asks the court to instruct the Jury to return a verdict for the defendant upon the following grounds:

First, the evidence shows that both plaintiff and defendant are residents, citizens and inhabitants of the State of Oregon, and this court has no jurisdiction of the case. The bare fact that the defendant is sued as receiver in a court action, does not give this court jurisdiction where the diverse citizenship does not exist.

Second, the evidence conclusively shows that Robert M. Betts, Lessee, was operating this mine, and electrical plant at the time of the injury and not Robert M. Betts as Receiver, and that by reason of the sale of the property, the duties of the receiver had terminated.

Third, That the evidence fails to disclose any proximate cause for the injury other than the negligence of the plaintiff himself. There is no negligence of the master which is shown to have contributed in any way to the injury.

Fourth, the testimony shows that the plaintiff was a volunteer, that the master owed him no duty; that his duties did not require him to be on the pole, or among the wires; that the master did not know that he was among the wires, or on the pole, or was attempting in any way to discharge duties thereon.

Fifth, the evidence shows that the injury was occasioned solely by the negligence of the plaintiff.

COURT: The court will overrule the motion.

Mr. SMITH: We will note an exception on the several grounds separately, if the Court please.

COURT: Very well."

And to which action of the court in overruling, the foregoing motion, the defendant then and there, by permission of the court, excepted.

WHEREUPON, counsel for the plaintiff and the defendant presented their arguments of the case to the jury; Whereupon after said arguments the court charged the jury as follows:

(See pages 338 to 358 of this Record.)

ALBERT SMITH, being on the witness stand, being duly sworn as a witness for plaintiff, was asked the following questions by plaintiff's counsel:

Q. What is your full name?

A. Albert Smith.

Q. Where do you reside?

A. Halfway.

Q. Halfway, Oregon?

A. Halfway, Oregon.

Q. Where were you residing on or about the 28th of last July?

A. Well, sir, I was working at the Union-Companion mine.

Q. You were working where?

A. At Union-Companion mine.

Q. Union-Companion?

A. Yes, sir. That is the Cornucopia Mining Company.

Q. Whom were you working for on about the

28th of last July?

A. Well, sir, I supposed I was working for Mr. Betts.

Q. You were working for Mr. Betts?

A. Yes, sir.

Q. What kind of work were you doing on or about the 28th day of July, last?

A. Well, I was sifting rock, sifting rock out for the concrete.

Q. Sifting rock?

A. Yes, sir.

Q. Did you know Johnnie Bisher at that time?

A. Yes, sir.

Q. Where was Johnnie Bisher working at the time?

A. He was doing just odd jobs around there, I don't remember just what he was doing at the time.

Q. Did you hear any one give Johnnie Bisher any orders?

A. Yes, sir.

Q. On what day?

A. I heard Mr. Ed Mills tell Johnnie Bisher that What's his Name?

Q. Buxton?

A. Mr. Buxton—to go down, that he wanted him on the line.

Mr. SMITH: How was that, now? State that again.

Q. Just repeat that loud enough so we can hear it.

A. Ed. Mills, Ed. Mills—

Q. Who was Ed. Mills?

A. Well, he was the man that I was working under—the boss.

Q. Working under?

A. Yes, he was the boss. He was the boss at that time, that I was working under.

Q. What did he say?

A. He told Johnnie Bisher that Mr. Buxton wanted him down on the line.

Q. On what line?

A. On the electric line.

Q. Who was Mr. Buxton?

A. Well, he was the man at the powerhouse. I don't know him—don't know the man at all.

Mr. SMITH: We move to strike out the evidence as incompetent, irrelevant and immaterial.

COURT: I will overrule the motion.

To which overruling of said motion defendant excepted, which exception was duly allowed by the court.

L. H. KENNEDY, being on the witness stand, being duly sworn as a witness for plaintiff, was asked by plaintiff's counsel the following questions:

Q. What is the custom of the average employer of requiring linemen to use rubber gloves?

Mr. SMITH: Objected to, as the custom is not pleaded in this case, or relied on. He cannot rely upon the statute and custom at the same time. If he wants to amend his complaint and rely on custom, he can do so.

Mr. RICHARDSON: It is not a question of relying on custom, if they failed to use the safety device, any safety device, for the purpose of protecting their employees.

COURT: I will overrule the objection. You may proceed.

To which overruling of defendant's objection to the foregoing interrogatory, defendant duly excepted and assigns an error in this action.

ROBERT M. BETTS, being on the witness stand, being duly sworn as a witness for defendant, was asked by plaintiff's counsel the following question:

Q. You didn't know that the laws of the State of Oregon required you to have your wires insulated, did you, Mr. Betts?

Mr. SMITH: Objected to as incompetent, irrelevant and immaterial. Ignorance of the law is no excuse for anybody. If it requires it, it does; if it doesn't, it don't. It is for the Court to say. It is immaterial whether he know it or not. Men have been hung when they didn't know what the law was.

COURT: You may answer the question.

To which foregoing question as overruled by the court, defendant duly excepted.

That Mr. Richardson, one of the attorneys for the plaintiff during the course of his argument to the jury argued to said jury and said:—Now, gentlemen, what about Mr. Betts. When we had Mr. Betts, this lessee Betts—lessee Betts on the witness stand, that he likes to be called. That is the title that he wants

to be called. When he was on the witness stand, I asked Mr. Betts, I says, "Mr. Betts, what about those rubber gloves?" First I asked him if he was an electrician. "No." "How came you to suggest to Harry Harbert that you would give him rubber gloves? Did you have any there?" "No." "How came you to suggest it?" "Well, I just naturally thought about it. It just naturally kind of occurred to me that maybe he might want them".

Now, gentlemen, there is a man that is not an electrician, a man that is not versed in the proper devices that an electric lineman needs, by his own admissions, and still he would come in here, and he would have you believe from that witness stand that he was the one that suggested about rubber gloves. Gentlemen, I will tell you, that will not hold water. That does not appeal to a man of real common ordinary intelligence as being something that a man like Betts would think. It looks like it must be a lawsuit, gentlemen, that suggested that, or an injury that suggested that.

It looks like the same thought suggested that to him that suggested that he was all of a sudden, instead of being a receiver of the Cornucopia Mines Company, he was a lessee.

Mr. SMITH: We except to the remarks of counsel, and assign them as error.

Mr. RICHARDSON: Your Honor, I did not make very many interruptions, and I am drawing inferences. The jury knows that I am not stating these as

facts.

COURT: I will overrule the motion. You may save an exception.

To all of the foregoing defendant duly excepted, and assigned as error, which exception was duly allowed by the court.

Whereupon, before the court gave its instructions as to the law of the case to the jury; the defendant requested that the court give the following numbered instructions to the jury as the law of this case: Instructions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, and 13 respectively; that the court refused and declined to give the foregoing numbered instructions as so requested by the defendant; that upon the refusal of the court to give said instructions as aforesaid, the defendant duly excepted to such refusal to give said instructions as to the law, to each of said instructions defendant saved his exception, which said exceptions were duly allowed by the court.

[Instructions Requested by the Defendant.]

I.

Gentlemen of the Jury, you are instructed to return a verdict for the defendant.

If the court refuses to give the above instruction the defendant excepts thereto, and without waiving such exception or his rights, requests the following:

II.

You are instructed that the evidence in this case does not show the proximate cause of the injury. You

will therefore return a verdict for the defendant.

If the court refuses to give the above instruction, the defendant excepts to such refusal, and without waiving his exception or his rights, requests the following instruction:

III.

You are instructed that the evidence in this case shows that the plaintiff was injured through his own negligence and not in the discharge of any duty of any kind whatsoever to the defendant. You are therefore instructed to return your verdict for the defendant.

If the court refuses the above instruction, the defendant excepts thereto, and without waiving such exception or his rights, requests the following:

IV.

You are instructed that the evidence in this case shows that Robert M. Betts, lessee, was operating the mine and power plant at the time of the injury, and as he is not a party to this action your verdict must be for the defendant.

If the court refuses the above instruction, the defendant excepts thereto, and without waiving his exception or his rights, requests the following:

V.

If you believe from the evidence that Johnnie Bischer, at the time he was injured, was on the pole and was not in the discharge of any duty imposed upon him, or if he was on the pole in a furtherance of his own learning or enlightenment, and his duties did

not require him to go up on the pole or among the wires, then he is what is known in law as a volunteer and he cannot recover in this case and your verdict must be for the defendant.

If the court refuses the above instruction, the defendant excepts thereto, and without waiving his exception or his rights, requests the following:

VI.

You are instructed that no person can recover damages from another for injuries inflicted by himself.

If, therefore, you believe from the evidence that at the time of the injury Johnnie Bisher received the same through any carelessness of his own, or while doing an act which his duties did not require, or in any other way than through the negligence of his employer, then I instruct you that he cannot recover in this action and your verdict must be for the defendant.

If the court refuses to give the above instruction, the defendant excepts thereto, and without waiving his exception or his rights, requests the following instruction:

VII.

If you believe from the evidence that it was not practicable for the employer to insulate the wires at the place of the happening of the injury, and if you further believe that the weather insulation spoken of was not practicable to use at that place, then I instruct you that the law does not require a vain or useless thing to be done. All statutes must be read

and construed and applied to human affairs by the rule of reason, and the duties which are imposed upon masters by what is known as the Employers' Liability Law of Oregon are such duties and obligations as can be performed reasonably and efficiently, and no obligation is laid upon the master to place upon his business an expense in furnishing appliances which are prohibitory either by the extreme cost or frequent renewals, which by frequency of the renewals of such appliances would compel the employer to close his enterprise. If you therefore believe that it was not practicable for the employer to insulate the wires and keep them insulated as against shock at the place of the injury, then I instruct you, as a matter of law, that it was not the duty of the employer to attempt to insulate the wires with weather insulation and you cannot consider his failure to so insulate the wires and keep them insulated as negligence.

If the court refuse to give the above instruction, the defendant excepts thereto, and without waiving his exception or his rights, requests the following instruction:

VIII.

Some testimony has been introduced as to rubber gloves and as to insulated nippers and as to body protectors.

I instruct you that the evidence fails utterly to show that the presence of insulated nippers or body protectors would have prevented the injury. You will,

therefore, disregard this evidence for no negligence of any employer is ground for liability unless such negligence caused injury.

If the court refuses to give the above instruction, the defendant excepts thereto, and without waiving his exception or his rights, requests the following:

IX.

As to rubber gloves, I instruct you that if you believe from the evidence that the nature or character of the work in question was such that rubber gloves were not an essential requisite, then failure to furnish them would not be negligence.

I instruct you further that if you believe from the evidence that the employer did not know that Johnnie Bisher was working on the poles or among the wires, then the master would be under no obligation to furnish him any protection.

X.

I further instruct you that if you believe from the evidence that the master offered to or was ready and willing to furnish rubber gloves to his employees who were working among the wires, and that such employees knew it and failed to request them, then the fact that they were working without rubber gloves would be their own voluntary choice or way and the employer would not be liable for the injury and the verdict in this case would be for the defendant.

If the court refuses to give the above instruction, the defendant excepts thereto, and without waiving his exception or his rights, requests the following instruction:

XI.

I instruct you further that the testimony in this case shows that the defendant, Betts, is a resident, citizen and inhabitant of Oregon, and plaintiff is also a resident, citizen and inhabitant of the State of Oregon; the court, therefore, has no jurisdiction of this case and you are directed to return a verdict for the defendant.

If the court refuses to give the above instruction, the defendant excepts thereto, and without waiving his exception or his rights, requests the following instruction:

XII.

I further instruct you that the evidence in this case does not show that Harry Harbet had any right or authority to control or order Johnnie Bischer in the discharge of his duties, except such as pertained to sending up material and carrying same from pole to pole. Harry Harbet was not a foreman, he was not a person in charge of the work or any part thereof, he was not discharging any duty of the master in relation to Johnnie Bischer did in mounting the poles or attempting to learn the work of an electrician or attempting to do any thing in or about the wires was of his own voluntary choice or selection, and he cannot recover in this action, and your verdict must be for the defendant.

If the court refuses to give the above instruction, the defendant excepts thereto, and without waiving his exception or his rights, requests the following instruction:

XIII.

I instruct you that the evidence shows that Johnnie Bischer knew the current was on these wires, also the volume of voltage and that said wires were alive, and if you believe that his duties as supply boy did not require him to work among the wires or on the poles but that he was acting outside his duties as supply boy, then I instruct you that he assumed the risk of danger, and if he was injured outside the scope of his duties as supply boy then he assumed the risk of the injury and he cannot recover, and your verdict must be for the defendant.

CALLAHAN and LITTLEFIELD & SMITH,
Attorneys for Defendant.

And now, in furtherance of justice, and that right may be done the defendant, Robert M. Betts, Receiver, who tenders and presents the foregoing as his Bill of Exceptions in this case to the action of the Court and verdict of the jury and prays that same may be settled and allowed and signed and sealed by the Court and made a part of the record, and the same is accordingly done this 9th day of Sept., 1913.

CHAS. E. WOLVERTON,
Trial Judge.

[Endorsed]: Bill of Exceptions. Filed Sept. 9, 1913.

A. M. CANNON,
Clerk U. S. District Court.

[Evidence.]

(Statement of case by Mr. Richardson.)

Mr. SMITH: Before counsel closes, in order to clear the record, I want to see that we understand. I understand him to state that he bases this action upon the Employers' Liability Act. Is that right?

Mr. RICHARDSON: That is right.

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Mr. RICHARDSON: There is not any attempt on the part of the plaintiff in this case, by the service of any summons to hold anybody, to charge any one with negligence, or to bring this action, or to prosecute this action against any one except Robert M. Betts, Receiver of the Cornucopia Mines Company of Oregon.

COURT: You sue him as receiver?

Mr. RICHARDSON: Sue him as receiver, and him alone.

COURT: I understand you do not sue him personally?

Mr. RICHARDSON: No, your Honor, not personally.

COURT: You expect to hold the Mines Company through him as receiver, and not personally?

Mr. RICHARDSON: Yes, your Honor.

COURT: I suppose that will be admitted, that Mr. Betts was receiver?

Mr. SMITH: Oh, yes, your Honor.

It is agreed between counsel that the record in the suit of Hamilton Trust Co. v. Cornucopia Mines Com-

pany (No. 3869), filed in this court June 14, 1912, may be considered admitted, and either side may read any portion of it.

JOHN BISHER, Jr., called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows.

Direct Examination.

Questions by Mr. RICHARDSON:

Johnnie, where do you live?

A. I live at Halfway, Oregon.

Q. Now, talk loud enough, Johnnie, so the jurors can hear what you have to say. How long have you lived at Halfway, Johnnie?

A. About 11 years.

Q. 11 years. How far is Halfway from the Cornucopia Mines Company?

A. Oh, I should judge about 13 miles.

Q. About 13 miles?

A. Yes, sir.

Q. What is that—a wagon road? Just a wagon road to the mines?

A. Yes, sir, a wagon road.

Q. No other transportation facilities except by team or automobile?

A. That is all.

Q. Do you know Mr. Robert M. Betts, Johnnie?

A. Oh, I have known him about six years.

Q. About six years?

A. Yes.

Q. Where has Mr. Betts been residing during that six years?

A. Part of the time at the mines, and been outside some of the time. I don't know where he was then.

Q. Now, did you ever work for Mr. Betts?

A. Yes, sir.

Q. When did you first work for Mr. Betts?

A. A year ago last summer.

Q. What kind of work did you do?

A. Just outside work.

Q. Outside work. What do you mean by outside work, Johnnie?

A. Working on the road, carrying lumber, and cleaning up around, and cutting brush, and raking up the yards.

Q. How long did you work for Mr. Betts at that time?

A. I worked all summer until school started in the fall.

Q. What wages did he pay you?

A. \$3.00 a day.

Q. Well, when did you next begin working for Mr. Betts?

A. Last summer just after school was out.

Q. And about what time of the year was that?

A. About the first of June, I think.

Q. About the first of June of what year?

A. Last summer.

Q. Last summer—1912?

A. Yes, sir.

Q. Who employed you at this time?

A. Mr. Betts.

Q. In what manner did he employ you?

A. Well, I called him up over the telephone from where I was at school.

Q. What did he say to you?

A. He told me to come up when school was out—he would have something for me to do.

Q. Well, did you go up when school was out?

A. I went up home, and stayed about a week, and then went up there.

Q. And what did you do when you went to the mine?

A. Well, the first night I worked on the rock crusher.

Q. Who told you to work on the rock crusher?

A. There was a man going to go down to the dance, and the man was on the crusher said he would run the train while he went to the dance, and Mr. Bishop told me to work on the crusher.

Q. Mr. who?

A. Bishop. That is the superintendent.

Q. Then how long did you work on the crusher?

A. I think I only worked there that night.

Q. Then what did you do?

A. Then I worked down by the compressor room, wheeling out dirt.

Q. Worked down by the compressor room?

A. Yes, sir.

Q. How long did you work at that?

A. About three or four days.

Q. What kind of work were you doing around the compressor?

A. Wheeling out dirt, out by the side of the building.

Q. Then what was the next employment they gave you?

A. I went to working on the crusher then, for awhile.

Q. What did you do on the crusher?

A. Just shovelled the rock into the crusher.

Q. Shovelled the rock into the crusher. Then what work did they put you at?

A. Then I worked there till they shut down the mill, and started to tear out the floors, and taking out the old machinery. Then I went to helping do that. When they stopped the mill, then the crusher stopped. They put me down there then.

Q. How long did you work there, Johnnie?

A. Well, I worked there about a month at various jobs.

Q. What did you do next?

A. Well, they had torn all the floor out of the mill, and got all the machinery out. Then I was working out on the dump, where they were sifting rocks, to get rocks to put in the concrete for the concrete foundation for the new machinery.

Q. Then what did you do? What was the next work they gave you to do?

A. Well, I changed off on that work, digging trenches for more concrete foundation for the tanks, and I was working on the dump when the foreman told me to go down to the power house.

Q. What foreman?

A. Ed Mills. He was foreman of the outside men at the mill.

Q. What did he tell you to do?

A. He told me to go down to the power house; that Buxton wanted me down there to work on the line.

Q. And did you go down there?

A. Yes, sir. I started right down the hill then—just went into the building and got my hat, and started right down the hill.

Q. What did Buxton tell you when you got down there?

A. I went down to the town. I met Harry Harbert down there, and he told me to come over to the store, and he would get some tools there, and I asked him what he was going to do, and he said, we would wire a few houses before we worked on the line. And we wired a saloon, and then went over—he put in a light at the hall; I just handed him tools. And then we went, the next job, we went up to Mr. Betts' house and put some wires in his house. Then one day we went down to the power house, and Mr. Buxton told us what kind of a tie to put on the pole.

Q. Did he show you how to tie it?

A. He showed how to tie it. He had an insulator

there, and he also had a wire, and a tie wire, and he cut and wrapped that around the insulator, and showed—Harry Harbert just before that had figured out a tie, and Mr. Buxton, when we got down there, said that wouldn't do—and he showed us another one, and he said that that was the one he wanted to use. And we told him all right. And he told me to help Harry Harbert.

Q. He told you to help Harry Harbert?

A. Yes, sir.

Q. Then what did you do?

A. Well, we went up the road a little ways, and Harry fixed poles.

Q. What did Mr. Buxton tell you to help Harry Harbert to do?

A. He didn't say just what to do. He just said, help Harry. He said Harry would tell me what to do.

Q. He said Harry would tell you what to do?

A. Yes. That was down at the power house.

Q. Well, what did Harry tell you to do?

A. Well, Harry climbed the pole, and I just carried some of the tools along first, and he went up the pole and fixed three or four himself. Then he told me, he says, "Well, it is pretty hard standing up there so long." He said, "We will take turns about." He said, "You come up and fix one, and I will fix the next one." I said, "All right," because Buxton told me to do what he would tell me; that he would tell me what to do. He went up there, and told me to fix one and he would fix the other one. He said it would be

easier on both of us. We did that for a few times. He worked a day or two that way, and then he saw that was pretty hard standing up there so long for one man, and he said, "We will both come up at the same time." He says, "One can wrap one end of the tie wire while the other wraps the other." He said, "We can do it quicker," and he says, "We can watch each other at the same time," and he says, "Maybe we won't get no shock if we watch each other. Maybe it will make it safer." And that is the way we were doing when I was injured.

Q. Now, this last pole, who climbed this last pole first that way—climbed the pole on which you were injured?

A. Harry.

Q. What did Harry tell you to do?

A. He just told me to put some insulators in the sack, and tie it to the rope, and he would draw it up. Then he told me to come up and do as I had done before.

Q. Well, what did he tell you to do when you got up on top of the pole? Did you get on top of the pole?

A. Yes, sir. I just got so my head was up, oh, just up about between the wires, about like that (illustrating).

Q. And where was Harry Harbert at this time?

A. He was on the opposite side of the pole.

Q. He was on the opposite side of the pole?

A. Yes, sir.

Q. About the same distance up the pole?

A. About the same distance.

Q. What did Harry tell you to do?

A. Well, he just said to fix—he didn't say just what to do then, because he told me what to do before.

Q. What did he tell you to do before?

A. He told me to wrap one end while he wrapped the other. He says, "We can do it quicker."

Q. What did you do when you got up on top of the pole?

A. Well, he had already had one end of the middle wire, tie wire, unwrapped, and I unwrapped my end, and took the middle wire in my right hand and started to lift it over the pole, as we had been doing before.

Q. Why did you lift the wire over the pole, or did any one tell you to do that, Johnnie?

A. Harry told me to do that.

Q. What did he tell you to do that for?

A. Well, to keep it farther away, so it wouldn't be apt to touch the other wire.

Q. Now, what happened when you were lifting this wire?

A. I just started to lift the wire up with my right hand. I was standing just—the wires came nearly to my shoulders—just about that high. I had to get up high enough, because they were pretty heavy. I just started to lift up the middle wire, and that is the last I remember.

Q. Johnnie, what tools or appliances did Mr. Betts furnish you with at the time that you were set to work

upon the line, if any?

A. I never worked on the line before excepting just this time.

Q. A little louder Johnnie.

A. I never worked on a line before until this time.

Q. Did they furnish you with any tools?

A. Well, Mr. Harbert, Harry Harbert, gave me a pair of climbers and a belt, and a pair of pliers.

Q. The pliers, did they have insulated handles?

A. No, sir. The pair of pliers that he gave me, they were dull, and the climbers were dull, and I sent down home and got a pair that I had used in climbing telephone poles, they were sharp, and the pliers, and the belt—I wore the belt that he gave me. And the pliers I sent down home and got a pair of pliers, because those that he gave me were old, and I couldn't use them, and they were so large I couldn't hardly use them.

Q. Did you try to use the climbers that he gave you?

A. I climbed one pole with them.

Q. Why couldn't you use them?

A. They were too dull. You cannot use climbers when they are very dull. You might slip. I climbed the pole right in front of the store when we was putting the lights in the saloon.

Mr. SMITH: We move to strike out all this testimony about the climbers and the belt and the pliers, for the reason that there is no risk alleged to have been occasioned by them at all. It simply encumbers

the record.

COURT: I understand they allege that he was not supplied with the proper utensils.

Mr. RICHARDSON: That is it, your Honor.

Mr. SMITH: But, if your Honor please, there is no charge he was hurt by reason of it. His charge is he was hurt by electric shock. He doesn't claim that they had anything to do with the shock.

COURT: I will overrule the objection.

Mr. SMITH: Note an exception.

Q. Johnnie, were you furnished a pair of rubber gloves?

A. No, sir.

Q. Did you see any rubber gloves?

A. I never did see a pair.

Q. Johnnie, had you ever worked on a transmission line, or any other lines that carried a dangerous voltage of electricity, before?

A. No, sir. I never had worked at electricity.

Q. Now, how far is it from the power plant to the stamp mill?

A. About a mile—

Q. The place from where they generate the electricity to the place they operate machinery with it?

A. I think it is about a mile and three quarters by the power line.

Q. About how many posts?

A. Oh, I should judge about seventy-five.

Q. About seventy-five posts, which the insulators were on?

A. Yes, sir.

Q. How many wires were strung upon the support carrying this electricity, Johnnie?

A. Three.

Q. Three wires?

A. Yes, sir.

Q. Now, what was the length of the cross arm?

A. About four feet.

Q. What kind of wires were they?

A. Copper.

Q. About how large?

A. Oh, about a little bit larger than a lead pencil.

Q. A little bit larger than a lead pencil. Were they naked wires?

A. Yes, sir.

Q. No insulation on them?

A. No, sir.

Q. What voltage of electricity were these wires carrying to the mill, being transmitted over these wires?

A. Well, I had been told 2300.

Q. 2300 volts?

A. Yes, sir.

Q. Are these transmission wires strung across any public highway, Johnnie?

A. Yes, sir. They cross the road between the town of Cornucopia, and the valley, and then they cross the road again between the town and the mine.

Q. Are there very many people travel that road?

A. Oh, the stage passes it twice a day, and then

there is about a dozen teams every day—freight teams, and the other teams, lumber.

Q. Are there very many people living around in that immediate vicinity?

A. Oh, I should judge about 500 people all around Cornucopia and the mines.

Q. Were there any houses near where you were hurt?

A. One about 200 yards.

Q. Anybody living in the house?

A. Yes, Mr. Panter.

Q. Did Mr. Buxton, the foreman, at the power house, give you any orders, Johnnie?

A. He just told me to help Harry; that he would tell me what to do.

Q. That Harry Harbert would tell you what to do?

A. Yes, sir.

Q. What did Harry tell you to do?

Mr. SMITH: That has been gone over, I think, if the Court please, by the examination this morning, and several of these last questions.

Mr. RICHARDSON: I think, your Honor, it may be that it has, but I was not sure. I believe I would like to have him answer this, to get this part of his testimony clear, and then I will not be guilty of any repetition.

COURT: Very well. He has gone over it. But if you want to make it clear, go ahead.

Q. Now what was the answer to that question?

A. You mean, what did Harry tell me to do?

Q. Yes.

A. When I first started to work with him, I just carried insulators and wires, and he went up the pole himself. Then after working about three or four days, or not quite that long, I guess,—

Q. A little louder.

A. After we had worked about two days, then it was pretty hard work for one man, he said, and he said it got tiresome up there, he said we would take turns about. He said I could climb one and fix it, and he would climb the next one. So we did that for a time. And then one man standing up there so long would get tired, and he said, "We will both go up at the same time." He said one could wrap one end of the tie wire, while the other wrapped the other end; we would do it quicker; and he said we could watch each other at the same time, and wouldn't be so apt to get a shock. So that is what we were doing when I was injured. We were both up the pole.

Q. Now, Johnnie, does that look like a cross arm?

A. Yes, sir.

Mr. SMITH: We have produced that, and state that it is the identical cross arm on which this injury happened.

COURT: Very well.

Q. Does that look like the cross arm?

A. Yes, sir.

COURT: That is already admitted. You need not go into it.

Mr. SMITH: It is the identical cross arm. We have produced it as such, and counsel can use it.

Mr. RICHARDSON: I want to find out from him if it looks like the same one.

COURT: It is already admitted. It is not necessary to prove further.

Mr. RICHARDSON: They might admit it, and it might not be the one, and before I receive it as such—

COURT: Do you know it is the one?

Mr. RICHARDSON: No, I don't. I was just asking him.

COURT: Do you know that is the one?

A. I couldn't say that that is the one, because there is so many.

Q. Does it look like the one?

A. It is just about the same.

Q. Were those four pegs in the one you were working on?

A. Yes, sir.

COURT: It is not necessary to take up time with that.

Mr. RICHARDSON: If they say that is the identical one, that will be sufficient.

Mr. SMITH: Yes, that is the one, Mr. Richardson.

Q. Johnnie, come down and explain to the jury where these transmission wires were fastened to these insulators.

A. This one we had already changed. That was

already changed. One wire was on this one, one on that end insulator. And before I went up the pole, Harry had taken the wire off his side of this insulator, and I come up—I took it off this side. And I started to lift this wire up with my right hand.

Q. Now, here is the pole.

A. The pole is right here.

Q. Right here. How wide was that pole?

A. About eight inches. I started to lift this wire up with my right hand, and lifted over the pole, to get it far enough from this one so we could fix this one without being too close, having the two too close together. And I just started to lift that wire up to lift it over the pole. Those wires are pretty heavy—I would sometimes have to get pretty close to the wire to lift it—about two hundred feet to lift. I just started to lift that wire up with my right hand. I remember of being up just high enough so I could lift pretty good, and that is the last I remember. I just realized I was getting a terrible shock, and I don't remember no more.

Q. Now, Johnnie, how much would you have to lift? You say that wire was a little heavy. About how much would you have to lift to lift that wire over the end of the pole here to get it over on this side?

A. About 75 pounds or 100.

Q. And you were trying to lift that with one hand?

A. Yes.

Q. And where were your feet?

A. Down on the pole. I had my feet, had climbers on, and my feet was stuck in the pole.

Q. Kind of astride of the pole?

A. No, just on the side of it, about like that.

Q. And you were lifting this middle wire?

A. Yes, sir.

Q. Why were you lifting this middle wire over here, Johnnie?

Q. Well, Harry told me we would lift it over, and that would make it further away from this one, so we could fix this one without getting a shock.

Q. When you were lifting this middle wire, did you use one or both hands?

A. I just started to lift that one with my right hand, one hand.

Q. And then you were between these two wires?

A. My head was between these two wires.

Q. Who told you to do it that way?

A. Harry Harbert.

Q. Where is Harry Harbert?

A. Standing there (pointing to Harbert).

COURT: You had your head, I understand, between the two wires?

A. Yes, sir.

COURT: Then your shoulders were not above the wire?

A. No, sir, there wasn't room enough. I couldn't get in between them to stand square.

COURT: Do you know the distance between those two wires?

Mr. RICHARDSON: Twelve inches.

Mr. SMITH: Twelve inches what—centers?

Mr. RICHARDSON: Twelve inches from post to post, I presume, or from one insulator to another.

Mr. SMITH: Well, if he knows, ask him. See if he knows.

A. That is the one. Measure it.

Mr. SMITH: How is that?

A. That is the one—measure it.

Mr. SMITH: Well, do you know without measuring it?

A. I never measured them. I never have been back there since.

Mr. RICHARDSON: About twelve inches.

Mr. SMITH: Twelve inch centers.

Q. Now, Johnnie, what happened to you when you got that sudden shock?

A. I just remembered that terrible feeling went through me. I cannot describe it, because it is pretty severe. Then the next thing I remember I thought I was dead.

Q. Then what was the next thing you remembered?

A. Then the next thing I remember, I was hanging down between the telephone wires, and there was bubbles rolling out of my mouth, and I tried to see, and everything looked white. Then in a short time, a little bit after that, I heard Harry Harbert tell the boy that came up with the wagon just then—told him to catch me. And I realized that if he would drop me,

it might hurt me, and I put my arms around the pole. My hands were gripped tight, my arms just about in this shape. I put my arms around the pole, and slid down.

Q. Then what did they do to you? What did you find wrong with you when you hit the ground?

A. My arms just felt like they had both been cut off right about there, and I couldn't hardly stand the pain. I would just yell all the time. And the boy carried me to the wagon, and put me on the wagon, and took me up town, where Dr. Walsh dressed my arm.

Q. Now, Johnnie, come down and we will show the jury the extent of your injuries. (Witness shows the jury his arms).

Q. Now, Johnnie, how was this right hand? Hold one hand and your arm out. How was this hand burned before they removed it?

Mr. SMITH: You mean the right hand, so we will get it into the record.

Mr. RICHARDSON: The right hand, that is off.

Q. What was the condition of that hand before they removed it?

A. The first I noticed it when I got down off the pole, I noticed that that first finger on the right hand had been burned in two—the first finger right across there.

Q. In what shape?

A. Like the wire had been burned right into it.

Q. The size of the wire?

A. A little larger than the wire, because it burned

a little wider.

Q. And about how deep?

A. About half an inch deep.

Q. In your right hand?

A. Close onto about there.

Q. Right through the palm of the hand?

A. Yes. That finger was nearly burned in two. A day or two after that, the skin began coming off both wrists right along there.

Q. Now, what was the condition of this hand, the left hand?

A. This one was just burned right on the side. The wires come in contact there, and it was black.

Q. Around the wrist?

A. On the wrist.

Q. Now, what about your suffering during that time?

A. I cannot describe it.

Q. It hurt, did it?

A. It hurt terribly. I walked the floor for two days and two nights without any sleep. I couldn't hardly stand it.

Q. Now, show this hand to the jury. What was the condition of your muscles at the time you received this burn?

A. Well, the muscles on my wrists here on this hand and along there was just in knots. Both hands just gripped as tight as they could, and both arms was set, something like that. I couldn't move them out of that way. I couldn't straighten the fingers.

When I got up to town, Dr. Walsh and Ranse Ladd, the man sitting there, just took my hands and rubbed my hands, tried to straighten them out, rubbed those, rubbed my arms here to start the circulation and try to straighten those fingers—the fingers on both hands gripped so tight.

Q. Did the doctor give you any morphine to try to ease your pain?

A. I don't know. He put something on each arm.

COURT: Before you put that on (the covering of the arm) let him cross examine him as to his physical condition. Then he won't have to take it off again.

Cross-Examination.

Questions by Mr. SMITH:

Will you show your left hand, please. Let us see the palm of your left hand.

Mr. RICHARDSON: Get up close to it, and let the jury examine it.

A. That is as much as I can straighten the fingers, only those two. The little one I cannot hardly move at all. The wire burned the two—the wires came in contact right there.

Q. What made this across this elbow?

A. I don't know what did that. The same way in this one.

Q. It is not as bad in the right elbow joint as in the left?

A. No, sir.

Q. Doesn't that look to you like a wire?

A. The doctor said that was not a wire burn.

Q. Do you know what part of the wire you touched with your left arm, or what part of your left arm touched the wire?

A. I don't remember anything about it. The last thing I remember was when I started to lift up the wire with my right hand.

Q. You don't know how you were hurt?

A. I don't know how this came in contact, this hand, at all.

Q. You do know that you had to touch two wires to get a shock, don't you?

A. That is what Mr. Buxton told me.

Q. They always told you not to touch two wires?

A. Yes, Mr. Buxton told me.

Q. You didn't have any duties that required you to touch two wires, did you, at the same time?

A. No, sir.

Q. You knew those wires were live, didn't you?

A. Yes, sir. He told me they were 2300 volts.

Direct Examination Continued.

Q. Johnnie, what use can you get of your left hand there? What happens if you turn it around when you try to use it?

A. Well, if it turns too far, so it will slip, it hurts—turn it over too far. Sometimes I turn it over to make a change—sometimes I turn my hand too far like that quick, and it slips in here some place, and it hurts about two hours.

Q. Does the stump there ever pain you?

A. It hurts all the time, in the joint, right across there.

Q. What about your ears—anything wrong with your head since you got that?

A. Well, there is something wrong with it. It never bothered me before, and since then, there is a little pus or something that runs out of them. I have to keep working them all the time.

Q. You have to keep working them all the time?

A. Yes.

Q. What does the doctor say?

Mr. SMITH: Objected to as incompetent. The doctor can testify.

COURT: Yes, the doctor can testify.

Q. I just want to ask him one other question. You don't claim, do you, Johnnie, that your head came in contact with the wire?

A. No, sir. I was just up between the wires—I was just about that high. My head was about that high above the wire.

Q. There is no other mark on your body to show where you touched the wire, except on your arm, is there?

A. Just my arm.

Q. Now, Johnnie, what did they do with you when you were hurt, after you were hurt?

A. Do you mean when I was up on the pole, to get me down?

Q. No, after you were down from the pole, and after you were over in Halfway, what did they do to

you there?

A. They didn't do anything. The doctor there dressed my hands.

Q. He dressed your hands. Then what did they do with you?

A. Then in about two days I came to Portland—came down here.

Q. You went home first?

A. At Halfway is my home.

Q. How soon did they take you home?

A. I was hurt in the morning about ten o'clock. In the afternoon about two o'clock, I think.

Q. What day of the week was this, Johnnie?

A. Sunday.

Q. It was on Sunday morning at ten o'clock?

A. Yes, sir.

Q. And where did they take you, when they took you from Halfway?

A. They took me down to Robinet, and took the train and came down here to the hospital.

Q. How long were you injured before you arrived in Portland?

A. Four days.

Q. Four days?

A. Yes, sir.

Q. What hospital did they take you to, if any?

A. Good Samaritan.

Q. Good Samaritan. How long were you there, Johnnie?

A. About three months.

Q. About three months. What physician and surgeon treated you when you were at the hospital?

A. Dr. Taylor. When they amputated my arm, Dr. Jessup helped him.

Q. Well, did you suffer very much, Johnnie, during that time?

A. Well, I should say so.

Q. Did they give you anything to keep you from suffering?

A. Gave me morphine, all they dared to.

Q. During the time you were in the hospital, had you been able to dress yourself, and take care of yourself, during any of that time?

A. Not then. Just in the last—just in about the last month I can put my coat on, and pull my pants up, and button my shoes. I cannot put on my collar yet. I cannot fasten my collar buttons, or anything like that.

Q. How old were you, Johnnie, on the 28th day of last July?

A. I was 18 the May before that.

Q. You were 18 years of age in May?

A. Yes, sir. That was about two months before.

COURT: That is 1912?

A. Yes, sir.

Q. You were 18 years old on the 8th of May, 1912?

A. The 25th.

Q. The 25th day of May, 1912?

A. Yes, sir.

Q. And you were injured on the 28th day of July,

1912?

A. Yes, sir.

Cross-Examination.

Questions by Mr. SMITH:

Now, in examining you, Johnnie, I want to get at the facts of the case as you understand them, and if you don't understand any question I ask you, say so, and we will try to make ourselves plain. Now, how long had you been working, as you claim, at putting these insulators on?

A. Well, we had been working off and on, I guess, about a week.

Q. And you had been doing that work, had you?

A. I had been helping Harbert do it.

Q. These wires were the same distance all the way along, weren't they?

A. Yes, sir.

Q. And neither you nor Mr. Harbert had met with any mishap because of these wires before, had you?

A. No, sir.

Q. There was always plenty of room before this time, wasn't there?

A. Well, several times I nearly touched them.

Q. But you never did, did you?

A. Never did.

Q. Now, you knew when you were working there that these were high tension wires?

A. Yes, sir.

Q. And carrying a high voltage?

A. Yes, sir.

Q. You were cautioned not to touch two of them at the same time?

A. Yes, sir.

Q. And you were also cautioned not to touch Harbert if he had his hand on one wire and you had yours on the other?

A. Well, he didn't say anything about that.

Q. He didn't?

A. No, sir.

Q. Now, if you will trust me to make this measurement, I will make it. If not, you just watch me and see that I am right. Now, between these outer pegs, we call that twelve inch center—that is very close. Isn't it true that when this wire was running along from pole to pole that this wire was on the inside of this insulator?

A. Well, sometimes it was and sometimes it was on the other side.

Q. And the other one would correspondingly be on the outside of the outer insulator? That is to say, the wires were not on the inside of the insulator at that time, were they?

A. I don't know whether they was on the inside or outside. They were put on different ways.

Q. You were changing from this glass insulator to this pottery insulator, weren't you?

A. We were taking those glass insulators off, and taking the pegs out, and putting new pegs in, and instead of those glass insulators, we were putting on

these porcelain ones.

Q. Do you remember at the time that you were hurt, whether the porcelain insulator was in place on this outer peg?

A. No, sir, I don't.

Q. You don't know that?

A. No, sir.

Q. Do you know whether it was in place on this other outer peg?

A. I don't think we had fixed that one yet.

Q. You don't know, though, do you?

A. I don't know.

Q. Now, of course we have different views of this matter, but don't you now remember that when you were hurt, the wire that was on this second peg from the left hand side was already lifted over the pole, and was placed down safely behind this second peg from the right hand side as you faced it?

A. No, sir. I started to lift it over there myself.

Q. Now, between these pegs, from the outer peg on either side of the pole, across the pole in the center and beyond the second peg from either end is a distance of 30 inches, is it not, approximately?

A. Just about.

Q. And you had seen Harbert work with these wires, right along, hadn't you?

A. Yes, sir.

Q. Were you studying electricity at that time?

A. Just had a little bit in school—physics.

Q. Naturally you wanted to find out all you could

about it, didn't you?

A. I didn't want to find out there. I intended to go to an electrical school after.

Q. You have always wanted to be an electrician, haven't you?

A. Yes, sir.

Q. And of course, what you could find out, you wanted to learn as much as possible, didn't you?

A. I wanted to learn everything that I could.

Q. How large was this pole to which the cross arm was attached?

A. I think the top of it was about eight inches.

Q. Did Harbert ever tell you that two men on the pole made it more dangerous?

A. No, sir. He told me just the opposite.

Q. That it made it safer?

A. He said that we could watch each other, and we would not be so apt to touch it.

Q. Now, at the time you were hurt, you had on climbers, didn't you?

A. Yes, sir.

Q. These sharp peg things that you climb with?

A. Yes, sir.

Q. And you had on a big strong belt?

A. Yes, sir.

Q. You say those were your own climbers?

A. My climbers.

Q. And they were sharp?

A. They were sharp, yes, sir.

Q. So your feet didn't slip, did they?

A. No, sir.

Q. And your belt didn't slip?

A. No, sir.

Q. How long had you known that those wires carried that voltage? Did you know it every day you worked there?

A. Oh, I had known it ever since I had been in the country—I heard that.

Q. Of course you had known that electricity was very dangerous, haven't you?

A. Yes, sir.

Q. Now, you speak of rubber gloves. Will you show us—just pull up—excuse me, I will, if you will let me—how high up do the rubber gloves come?

A. I don't know. I never seen any.

Q. Don't you know that Harbert wouldn't work with rubber gloves, because it was more dangerous with them than without?

A. I didn't know.

Q. Don't you know that?

A. I didn't know it.

Q. Do you know whether or not a man's hands will sweat in rubber gloves?

A. Well, I suppose they would.

Q. And his arm will correspondingly sweat?

A. Well, that is reasonable.

Q. And you know also that if your hand is wet, or your feet are wet, you know that a damp surface catches electricity, or conducts it, quicker than dry, doesn't it?

A. I noticed that, because when I would handle the wire, I would have just begun to start to let loose of it, and my hands would be moist, the sparks would follow my fingers—just touch them.

Q. Frequently in handling the wire you would wipe your hands off, wouldn't you?

A. Yes, sir.

Q. So would Harbert, wouldn't he?

A. Yes, sir.

Q. Now, do you know the object in changing from this type insulator, the glass insulator, to the crockery one?

A. Well, he said so it would be a better insulator.

Q. Did he tell you why?

A. Yes.

Q. Why?

A. Because he said they were going to put on larger—put on a higher voltage over the same wires, and had to have higher insulation.

Q. So you know enough about electricity to know they can do that, don't you?

A. That is what he told me.

Q. That they can so handle it so they will put on higher voltage over the same sized wire?

A. Yes, sir.

Q. Do you know what they call that?

A. Putting higher insulation on.

Q. I know. But what process is it they call it in handling electricity so they can put higher voltage over the same wire than the wire was carrying before?

A. I don't know?

Q. Did you ever hear about stepping the current up?

A. I heard about that in Physics. I read that.

Q. You have heard about stepping up transformer, haven't you?

A. Yes, read about that.

Q. And you knew at the time what was meant by stepping the current up?

A. No, sir, I didn't know it then. I just learned it last year.

Q. You have been studying electricity since, have you?

A. Just in Physics.

Q. But you did know that they were trying to fix this so that the same sized wire would carry a good deal heavier current.

A. That is what he told me was the purpose.

Q. Now, you spoke of a conversation with Mr. Buxton? Did he ever give you any climbers?

A. Mr. Buxton?

Q. Yes.

A. No, sir.

Q. Did he ever tell you that it might become necessary for you to climb the pole?

A. He told me just to help Harbert.

Q. Well, now, will you kindly answer my question? Did Mr. Buxton ever tell you that you might have to climb the pole?

A. No, sir.

Q. Didn't he hire you because he knew that you understood how to climb a pole? Wasn't that one of the reasons he hired you?

A. I don't know. I never asked him.

Q. Had you ever worked for a telephone company or this company before?

A. I had worked for this company, yes, sir.

Q. Had you climbed the poles before this?

A. Not these poles.

Q. No, any poles, I mean?

A. I had climbed telephone poles.

Q. You knew how to handle the climbers, didn't you?

A. Yes, sir.

Q. And you knew how to take care of yourself on a pole, didn't you?

A. Yes, sir, a telephone pole, where there is one wire.

Q. How long did you climb telephone poles before you were hurt over here at these poles?

A. I have climbed a little—well, my father has owned a line for five or six years, and I would come home a little while, and I would climb maybe a week, help him remodel his line. Then I wouldn't climb any more that year. Next year maybe I would climb about the same time. So I climbed about a week out of each year, I suppose, for three or four years.

Q. So then you had been in the habit of climbing telephone poles for quite a little while, hadn't you?

A. Yes, I had climbed telephone poles.

Q. And using the belt?

A. Yes, sir.

Q. And these climbers?

A. Yes, sir.

Q. Now, isn't it true, or do you remember now, Johnnie, didn't Mr. Buxton, at the time he gave you that pair of climbers that you spoke of—

A. He didn't give them to me.

Q. Who did?

A. Harbert.

Q. Did Mr. Buxton ever tell you that one reason they wanted you was that you knew how to climb the poles?

A. He never told me that.

Q. And that in working with Harbert, if anything happened to Harbert, you could get up the pole and save him?

A. No, sir.

Q. Anything of that kind?

A. He never told me that.

Q. Don't you know that that was all in the world they wanted with you, so far as pole climbing was concerned?

A. I don't know what they wanted me for there. He just told me to go down there. He told me to help Harbert.

Q. Now, do you remember what happened after you got that shock?

A. Well, when I first regained consciousness, I asked Harbert how I did it. He said he didn't know.

Q. You don't know either?

A. I don't know either.

Q. You know enough 'about electricity to know that when there is a short circuit, there is a flash, or is there not?

A. I don't know.

Q. Is there a flash under that circumstance? Suppose a man's arm, both of them, come in touch with one wire, and one the other, would it be a flash, or anything of the kind?

A. I don't know whether it would about that, or not.

Q. Have you worked on the pole when you would be adjusting this side of the wire, or tying it in, and by twisting with the nippers the end of the wire would touch the other wire and cause a flash?

A. No, sir, we kept it from doing that as much as we could.

Q. You were careful enough not to do that, weren't you?

A. Yes, sir.

Q. You never saw Harbert that careless, did you?

A. No, he never touched it either.

Q. Now, do you know whether, as quick as you got in trouble, Harbert struck your hand and knocked it off the wire?

A. I don't know anything about it.

Q. You don't know what happened at all after you got shocked?

A. I don't remember anything after I started to

lift up the middle wire.

Q. And you cannot tell the jury now how you happened to lift up these two wires?

A. No, sir, I can't do it.

Q. No duty you had required you to touch two live wires at the same time?

A. No, sir.

Q. Now, as I understand you, Johnnie, you were working on this side of the pole, were you?

A. Yes, sir. I was facing Harbert and the pole was, to my knowledge, I think the line run in this direction.

Q. Ran north and south?

A. Yes, sir. And I was standing facing that way

Q. Facing north?

A. Yes, sir.

Q. Then, if we would turn this around, we would have the situation, wouldn't we, about like that?

A. Yes, sir.

Q. And you claim you were standing on that pole with your head up just between these wires, just about to your chin?

A. Just between those two.

Q. Was the pole immediately in front of you, or were you the other side of the pole, do you know?

A. The pole?

Q. Yes.

A. I don't remember. I was just facing that way. I don't remember whether the cross arm was toward me, or not.

Q. Now, when you were trying to lift this wire from off here, was the insulator on that peg at that time?

A. Yes, sir.

Q. Did you help loosen it?

A. I loosened this side of it, the wire on this side.

Q. And then you tried to lift this wire when you were in a position when your head was about this high? Is that it?

A. Yes, sir.

Q. And you were still on this pole over here—you tried to lift it with your right hand, is that it?

A. Yes, sir.

Q. Up this way and over the pole?

A. Yes, sir.

Q. Where was your left hand?

A. I don't know. Sometimes they were heavy, and if we just had to lift them straight up, I would lift them with both hands.

Q. Was Harry trying to help you lift that thing?

A. I don't remember whether he was or not.

Q. If he was, of course, it would very materially lessen the weight that you were trying to lift, wouldn't it? That would be stretched between two poles, wouldn't it?

A. Yes, sir.

Q. And if he was on one side lifting, and you on the other side lifting, it would make it much lighter, wouldn't it?

A. Yes, sir.

Q. And you don't know whether that was the situation or not?

A. I don't think he had hold of the wire at all, but I don't remember for sure.

Q. Now, at this time that you say that Mr. Buxton showed you how to tie the wires—

A. It was down at the power house.

Q. How long was that before you got hurt?

A. Oh, I think about a week. Not quite that long.

Q. Did he show you that in order to teach you how?

A. Well, when I was up to the town, Harbert had figured out a tie, and he took it down to Buxton. Buxton said that wasn't the tie that he wanted, and Buxton showed Harry Harbert and I a tie right in front of the house.

Q. Well, now, was he showing you, or was he showing Harry Harbert?

A. I don't know whether he was showing me or not.

Q. You didn't?

A. No.

Q. Isn't it the fact that he was explaining to Harry Harbert how to tie this wire on this new insulator, and that you were just simply an onlooker?

A. That is the kind of insulator he was showing it on.

Q. I don't think you understood my question. I think you are trying to answer my questions. What I am asking you is, if Mr. Buxton was showing Harry

Harbert how to do the work.

A. I don't know whether he was showing—

Q. And you looked on? Isn't that it?

A. He didn't say who he wanted to see it.

Q. I didn't ask you whether he said whom he wanted to see.

A. I say, he didn't say who he was showing—who he wanted to see.

Q. But he was telling Harry Harbert, because Harry Harbert was the lineman, wasn't he?

A. He was talking to both of us.

Q. Buxton never told you at that time that he wanted you to do any tying of these wires?

A. No, he didn't tell me to tie wires.

Q. He never at any time told you to tie wires on those insulators, did he?

A. He didn't tell me to do anything only to help Harry.

Q. And you know he was depending on Harry to tie the wires, and do the work on the insulators, wasn't he?

A. I don't know whether he was or not.

Q. That was what he was hired for?

A. It was what Harry was hired for, I suppose.

Q. You were hired to carry the things along the ground, weren't you?

A. I don't know. He never told me what I was to do.

Q. Who hired you? Do you know for whom you were working at that time?

A. Mr. Betts hired me.

Q. Well, do you know? It was him himself, was it?

A. I called up over the telephone.

Q. Now, something was said here this morning about Mr. Betts running that mine as lessee. You knew that he was running it away along in November, didn't you, before November?

A. I knew that he was manager there.

Q. You have been up at the tunnel at the mine, haven't you?

A. The tunnel?

Q. Yes.

A. Yes, sir.

Q. You have been at the mill?

A. Yes, sir.

Q. You have been at the office?

A. Yes, sir.

Q. Did you ever see those notices that were posted there stating who was running that mine, that Mr. Betts was as lessee?

A. I never noticed it, never stopped to notice. When I went in the office, I just went after my check.

Q. You, of course, could write before you were hurt?

A. Yes, sir.

Q. You wrote right-handed too, didn't you?

A. Yes, sir.

Q. Would you know your signature, if you should see it?

A. I am pretty sure I would.

Q. I will ask you if your name was signed to that paper by yourself.

A. Yes, sir.

Q. And did you notice at the time that that was Mr. Betts lessee?

A. I never noticed.

Q. His name being there?

A. I never noticed that.

Q. This is a receipt for a voucher, isn't it? Or it is your voucher for work, dated July 15, 1912, about a week before you were hurt?

A. I don't know why I signed that.

Q. Well, it is a receipt, isn't it, acknowledging that you have been paid for your work?

A. I don't remember ever signing that, but I know the signature.

Q. Yes, that is your signature, isn't it?

A. Yes. I don't remember ever seeing those little slips like that on the one I signed.

Q. And Mr. Betts' name is Robert M. Betts, just like that is there, isn't it?

A. I never seen that "Robert M. Betts, Lessee," before like that.

Q. You didn't notice that at the time? Is that it?

A. I never did notice it.

Q. His name is Robert M. Betts, isn't it?

A. I have seen that Robert M. Betts.

Mr. SMITH: We will ask to have this document identified. Then I will show it to Mr. Richardson.

Marked "Defendant's Exhibit A".

Q. You hadn't been out of school very long when you went to work for Mr. Betts there, had you?

A. Just went out of school before I started to work about a week.

Q. Now, after you were hurt, you went down and got your pay, didn't you?

A. No, sir.

Q. Were you ever paid for this work?

A. Well, they put money in the bank when I was down in the hospital.

Q. Then you didn't tell anybody to sign the payroll for you, did you?

A. No, sir. I don't know whether it has ever been signed.

Q. Is your memory plain as to what you were doing at the time you were hurt, about lifting that wire?

A. Just at that time, it is.

Q. It is very plain as to that?

A. I remember just as if it was a week ago.

Q. You know Mr. Buxton, don't you?

A. Yes, sir.

Q. And you know Harry Harbert pretty well, don't you?

A. I hadn't known him very long. I have worked with him up there and that is about the first I got acquainted with him.

Q. Do you remember shortly after you were hurt, that you were lying on the counter in the store?

A. Collar?

Q. Counter—lying on the counter in the store? You know where the store is, don't you?

A. Yes, sir. Yes.

Q. Do you remember that under the doctor's direction they rubbed your muscles very thoroughly to get the knots out of the muscles?

A. Yes, sir.

Q. Or get the convulsions out of it.

A. I remember that, because it hurt pretty bad.

Q. You remember that? You knew what was going on at that time, didn't you?

A. Yes, sir.

Q. After they did that, you remember that you went out for a walk, didn't you?

A. A fellow took me by the arm and ran me up and down the street.

Q. You remember that distinctly, too, don't you?

A. Yes, sir.

Q. Now, do you remember of talking to Mr. Buxton shortly after you were hurt, talking there in the store?

A. I think all he says is just told them what to do. That is all I remember talking to him about.

Q. Don't you remember that he came in, and you and Mr. Buxton were always pretty good friends, weren't you?

A. Yes, sir.

Q. Liked each other a whole lot, didn't you?

A. Yes, sir.

Q. He was walking up and down the store there

pretty much excited from your hurt, wasn't he?

A. I don't know whether he was or not. I was hurt so bad I didn't know nothing much.

Q. Did you ever make any remark at that time, in the presence of Mr. Buxton and in the presence of Mr. Harbert, when you were there, when he was walking up and down there, you said, "She is a hot one, Buck", something to that effect? Do you remember that?

A. No.

Q. To which he replied something to this effect, "Yes, when things get tangled up with 2300, it is pretty hot"?

A. I don't remember saying anything like that.

Q. You cannot deny that you did say it, can you, Johnnie?

A. No.

Q. Now, do you remember that after that you spoke to him and told him something to the effect "Don't feel so badly about it, Buck. It was my fault."

A. No, I don't believe I said that.

Q. What did you say?

A. I don't remember that I said anything.

Q. You don't remember whether you did or not now, do you?

A. I remember just about what was going on, but I don't remember saying anything like that.

Q. Now, you also remember that after you left that store, your mind is perfectly clear?

A. Yes, sir.

Q. How did you leave the store? In what vehicle or conveyance?

A. I didn't leave the store in a vehicle.

Q. Where did they take you after you left the store?

A. Took me up and down the street a little while, and then took me down the road afoot.

Q. Then where did you go?

A. Then in a short time an automobile came along and took me home.

Q. Whose automobile was it, do you know?

A. Batty's.

Q. Who went with you in that automobile, please?

A. Ranse Ladd, I think. Harry Harbert took me down as far as I walked.

Q. He took you down to where you took the automobile, didn't he?

A. Yes, sir.

Q. You remember that very distinctly, too, don't you?

A. Yes, sir.

Q. Now, right before you got in the automobile, or just about that time, did you not also tell Harry Harbert that you didn't know how it happened?

A. No.

Q. That you didn't blame anybody for it?

A. No, I never told him that.

Q. What did you tell him?

A. I didn't tell him anything.

Q. Anything to that effect?

A. No.

Q. Did you discuss with him whether you were careless or negligent at that time, or not?

A. No. All I said to him about how I was injured was when he just started to take me down off the pole. I said, "How did it happen?" That is all I ever said to him about it.

Q. Then did he tell you?

A. He said, "I don't know." He was pretty badly excited, and he said, "Oh, I don't know." That is all.

Q. Do you remember at that time whether he told you that he struck your right arm off?

A. He told me he kicked me loose.

Q. Kicked you loose?

A. Yes, sir.

Q. Did he also tell you that he struck you so hard to get you out of the wires that he himself fell from the pole, twenty feet or more from the ground?

A. Yes, he told me that.

Q. You remember that distinctly, don't you?

A. Yes.

Q. Then he came right back up the pole after you again, didn't he?

A. Yes, sir.

Q. Then he cut your belt and got you down the pole the best he could, didn't he?

A. He was going to cut my belt. I was just going to straighten up. Then he was going to cut my belt. That is the last I knew. I realized the other fellow couldn't catch me, and I put my arms around the pole.

Q. He didn't realize at that time he had got you out of the wires, did he?

A. I don't know whether he did or not.

Q. Do you know now or were you told then about this stepping up the current? How many times they were going to increase it?

A. No, I have learned that since.

Q. You have learned that since?

A. Learned that just about a month ago.

Q. You knew at all times when you were working there that 2300 volts was a very dangerous voltage, didn't you?

A. Mr. Buxton told me that if I shorted, it would kill me.

Q. Do you know what voltage is the least voltage that will kill a man?

A. No.

Q. Did you know then?

A. No.

Q. But they did tell you that 2300 volts would kill you, didn't they?

A. Mr. Buxton, the man sitting there, told me if I shorted the wires, touched two at once—

Q. That is what you mean by shorting the wires?

A. Yes, sir.

Q. That is what you call a short circuit, isn't it?

A. Yes, sir.

Q. So, when speaking of it, you say short and shorted the wires?

A. He said if I would short the wires that it would

kill me.

Q. You also knew that it was perfectly safe to work there as long as you did not touch two wires, didn't you?

A. I knew it was pretty hard to keep from touching them, though.

Q. Well, will you kindly answer the question? You knew it was perfectly safe to work with one wire and lift it back and forth, although it carried 2300 volts, if you didn't touch another wire, or make another contact?

A. Yes. He told me—Harry Harbert told me that one wire wouldn't hurt me unless it connected with the ground.

Q. You have noticed birds, haven't you, fly and light on these wires going across the country, when they had this current in, and they were not hurt when they only touched one?

A. I never remember birds sitting on the wire. They might do it.

Q. You know Mr. Ladd, too, don't you?

A. Who?

Q. Mr. Ladd, this gentleman here? Stand up, Mr. Ladd, if you please.

A. Yes, sir, I know him.

Q. How long have you known him?

A. Oh, four or five years.

Q. Did you talk to him down there in that store about how you were hurt?

A. No, sir.

Q. Did you tell him that you must have gotten careless?

A. No, sir.

Q. That nobody was to blame, or words to that effect?

A. No, sir.

Q. Did you tell him, or talk to him to that effect, when he was massaging your arm there?

A. No, sir.

Q. You spoke awhile ago that Mr. Ladd went down in the machine with you, too?

A. I think he did.

Q. Did you tell him in the machine—did you talk to him there about it, and tell him there that you didn't blame anybody, that you must have gotten careless?

A. No, sir.

Q. Or words to that effect?

A. I didn't talk about how I was hurt at all.

Q. Do you know Mrs. Gray? Do you know Mrs. Katherine Gray?

A. I don't know whether her name is Katherine or not. I know Mrs. Gray.

Q. Well, you know a Mrs. Gray that lives in that country up there?

A. Yes, sir.

Q. Did she visit you at the hospital?

A. Yes, sir.

Q. Did you talk to her about this injury?

A. A little bit.

Q. Did you tell her that you didn't know how it happened, that you must have gotten careless, that you didn't blame anybody, or words to that effect?

A. No, sir. I told her I didn't know how it happened.

Q. Concerning these pliers, you were not using pliers when you were hurt, were you?

A. I did just a little before.

Q. At the time you were hurt, you were not working with pliers, were you?

A. No, sir. I just started to lift up the wire.

Q. And the pliers that were used there by Harbert didn't have any insulated handles, or anything of that kind, did they?

A. No, sir.

Q. So you were not hurt by reason of the pliers?

A. No, sir.

Q. And at one time also you spoke of a pad, or a protection, I believe you called it a belly pad, that men sometimes use?

A. I didn't say anything about a belly pad.

Q. Well, it was brought out in the opening statement. Do you know where they use those pads, and under what circumstances?

A. No, never heard of a belly pad.

Q. You know that they don't use them out in that transmission work there, where there are only three wires up there, don't you?

A. I never seen any to know what they were.

Q. And you were not hurt by reason of not hav-

ing a pad in front of your body? It was your arms that came in contact with the wire?

A. Yes, sir.

Redirect Examination.

Q. Now, Johnnie, about these conversations that took place at the store immediately after you were injured. You say they took you up and down the road. What did they run you up and down the road for?

A. To keep me from going to sleep.

Q. Had the doctor at the store given you—

Mr. SMITH: I have no objection to counsel putting in his case, and conducting his re-examination, but I think he is too leading.

Mr. RICHARDSON: I didn't mean to be, your Honor.

COURT: Very well. Proceed.

Q. Now, Johnnie, you say they gave you morphine?

A. I don't know what it was. He shot something in my arms, and I began to feel sleepy after that.

Q. Then what did they do to you?

A. Then, to keep me from going to sleep, they ran me around the counters a few times.

Q. Were you feeling sleepy?

A. I kept wanting to lay down and go to sleep, and then they took me out on the road, on the street—ran me up and down the street a few times; and then pretty soon they started me down along the road to—

ward home on foot.

Q. What did the doctor do to you when they brought you to the store?

A. He laid me on the counter, and put some quilts under me, and started to rub my arms, trying to straighten my fingers.

Q. Then did he do anything else?

A. Just working with me that way.

Q. Did he give you any injection of any kind?

A. Well, after they worked with my fingers awhile, Mr. Ladd and two or three others—I don't remember who they were—were rubbing my arms and trying to straighten my fingers, and then the doctor fixed up this dope and put in my arms.

Q. How did he put it in your arms?

A. Through a little needle.

Q. And then you got sleepy?

A. Shortly after that.

Q. Were you suffering very much, Johnnie, during all of that time?

A. Yes, sir.

Q. Were you groaning and hollering?

A. I was groaning pretty loud.

Q. Did you suffer constantly until you came to Portland?

A. Yes, sir.

Q. Did you sleep?

A. Very little.

Q. Then what made you sleep?

A. When I got down to the hospital here, Dr.

Taylor came up about five o'clock, and he gave me something.

Q. To put you to sleep?

A. Well, it didn't put me to sleep right away, but I slept a little that night.

Q. Had you had very much sleep before then since the accident?

A. Not over a half hour, I don't believe, all together.

(Witness excused.)

Dr. FRANK M. TAYLOR, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. RICHARDSON:

Dr. Taylor, what is your business?

A. Physician and surgeon.

Q. How long have you been a physician and surgeon?

A. Since 1901.

Q. Are you acquainted with John L. Bisher, Jr.?

A. Yes, sir.

Q. Did you render any service to him on or about August or the latter part of July last year?

A. I was first called to see him on the 31st of July.

Q. The 31st of July?

A. Yes, sir.

Q. What was his condition at that time, Doctor?

A. Well, I was called up to the Good Samaritan Hospital, and I found him in bed with both hands wrapped up. I immediately proceeded to expose them to find out what the conditions were; and I found the right hand was cramped like this. There was a deep burn right on the inside of this finger and the inside of this thumb, and the burn extending around this way. That was all we could see at the present time, beyond the fact that the hand was considerably swollen, and the temperature sense would indicate there wasn't much of any circulation in it. That was the condition of the right hand, just the visual experience as we would see it. On the left hand there was a burn across the wrist, about this point, as I remember it. I have forgotten whether it was over on the upper side or under side. At any rate, it was across here, and across the back of the hand like this. He had a little laceration of the skin about the elbow on this arm, and also on this arm. His pulse was rapid, and a little bit weak, and he showed considerable signs of what we call shock—in other words, exhaustion. And he was evidently, from all visual experience, in extreme pain.

Q. What treatment did you prescribe and what did you do, Doctor?

A. We first began by using hot lotions on there, with the idea of re-establishing circulation, if possible. In other words, we wanted to save everything we could. There was no way of telling at that time how much destruction there would be. I felt certain

at that time the right finger and thumb of the right hand would have to come off. I also felt sure the skin would have to come off. So we do the next best thing, and we used hot dressings on there, to dilate the arteries as much as possible—bring the blood down there and save as much as we can. We followed that out day by day for about two weeks. At the end of that time the circulation was so completely shut off, and sloughing so bad, the only safe thing to do, and the only way to save the boy's life was to amputate the arm. That was about two weeks, or a little over two weeks after he came in. There was absolutely no circulation left in his hand at that time. There is a peculiar thing about an electrical burn, that there may be more circulation immediately after the burn than some time afterwards, because the tendency of the arteries is to contract. When electricity goes through the system, it goes principally through the arteries, and it inflames the arteries, and as a result of that inflammation those arteries begin to close down and close down — where there is circulation at first there may not be circulation afterwards. At the end of two weeks we went in and made our lines of incision where we could see where the healthy skin was from where the dead skin was. We also held back—took the other tissue as close as we could, between the live and the dead, in saving every particle of arm it was possible. Even we were a little bit afraid we might have to go in again, but we didn't, fortunately. At the same time

we had him under an anaesthetic.

Q. Doctor, maybe you can illustrate it better if you have the young man's arm.

A. I can illustrate it all right on my arm, I think, unless you would rather.

Q. That is all right.

A. At the same time there was a lot of sloughing on this hand, where the burned tissues were gradually coming off. While we had him under the anaesthetic, we cleaned it up as much as we could. At that time I knew part of this bone would come, the bone on the outer side of the arm, I didn't know just how much of it would come out; it hadn't separated itself completely. I still hoped there would be a little on the inside we could save. And after a couple of more weeks, the thing had so completely separated, and we knew exactly where our lines were, we made a second operation. And this bone had completely sloughed off; that is there was a section, a little bit right on this end, that was still alive, and right through here. We simply went through with a gouge, a kind of spoon instrument—we didn't have to take a knife, or saw or anything else—and separated off the dead bone from the live bone. At the same time all of these muscles in here had been completely burned off. If you will have him come up here, I can illustrate that better, Mr. Richardson. (Bisher comes forward.) You see how he is here, this bone here—that is a little of this bone left down here; but this part here was absolutely dead—it was rotten—so we

could take a blunt instrument and separate the live and dead part of the bone. And these muscles here had also sloughed off—there were no muscles. There would be no way of raising these fingers at all; and there would be no way of closing within that much of this one. So we went up here—got these ends of the same muscles above, where they were alive, split them, took this end, turned it over and attached it down here to these tendons. We took two or three of these muscles up that way in hopes of getting some result—some hand there that would be worth something to the boy. Even at that time we were a little bit doubtful whether that hand would be worth anything at all. There was no skin on here. If there had been we could have done a little more radical work at the time; so we had to dress the raw—we had nothing to skin-graft on. Again we took time for nature to do her best. After a couple of weeks more, such a matter—I have forgotten just the exact length of time—we took skin off his leg, and grafted over, which you see here, it is covered over a distance of that kind. So that is what we have. Now, you will see what the result is. You see he can bend his fingers reasonably well, especially these two. There isn't very much strength in this, because the muscles have been bound down. In the first place, there is only one muscle in the whole business, where there ought to be about three to work with. And they are bound down in this scar, so they don't work very well. It is a little tender there at the present time. There

has been a little new bone formed on the edge of where we scraped that off, and he has practically no power of extending these fingers. Now, at the time we did that we were a little bit in doubt. We really thought the conservative course would be to take that finger off. We did like we did every place else—we gave nature a chance to save every piece of tissue we could for the boy, because he needed it—the other arm was gone. So the result is he has these fingers that he can grasp a little. They are better than none at all. Still he hasn't the power of opening it up much. This muscle doesn't work well. It binds down in here.

Q. Doctor, did you do any skin-grafting?

A. Yes.

Q. Where did you get your skin?

A. Took the skin off his leg.

Q. How much did you take off his leg.

A. Took enough to cover this. It left a space on his leg about 4 x 6, or 6 x 6, something like that. When we skin-graft, we don't take the full thickness of the skin. We split the skin, so we take the superficial layer of the skin, and the other heals up. It may leave a little scar where we took it off his leg. Where his hand is particularly weak is this. This bone is gone. He has only one bone where he ought to have two. When he comes to close his hand he comes off at the angle like this. In other words, it hasn't any support on that side. If we had put a brace on there like this, we have got to involve the wrist joint, so

that he cannot work it this way, you see. So that he would be worse off than if he had none at all. Fortunately he is able to grasp, though he is not able to use much strength in it.

Q. What percentage of the efficiency of that hand is lost, Doctor, would you judge, in your opinion?

A. (To Bisher—Just grasp it as tight as you can.) Oh, a conservative estimate would be 75 per cent, anyhow. In the first place, he hasn't the power of grasping anything very tightly. The sense of touch is gone altogether in this little finger. It is nearly all gone in this. There is a little feeling in this. There is one nerve that comes down here, that went through this area here, that sloughed out, that supplies this finger, and supplies the inside of this finger. That nerve is gone. There is no way of picking that nerve up, or of splicing the nerve in there.

Q. Doctor, from your examination and treatment of the injury sustained by the plaintiff, John Bisher, Jr., what would you say as to the pain and suffering accompanying an injury of that kind?

A. Well, the pain is something immense—something awful for a long time. In fact, we had to use drugs for weeks there to relieve the boy. He couldn't sleep—he couldn't rest in the day-time, or anything else, without something. That continued until after the amputation—continued until after we had fixed this up—didn't it, John? We would have to give you something at night? He was a brave chap. Anybody else would have died, I think.

Mr. SMITH: We move to strike that out—about anybody else dying.

A. Well, it did have a lot to do with it.

Mr. SMITH: I move to strike out that part of his lecture as immaterial.

COURT: What somebody else has said about the matter doesn't amount to anything.

A. As a matter of fact, the boy was gritty anyhow, and he stood a lot. He did his best to get along without anything, and he even begged not to have it at times, when I really thought his condition required something to protect his general strength; in other words, to keep him alive. There was one time, just before we amputated, that I really almost despaired of the boy's living, but his constitution and other things were in his favor, and he did pull through, disabled though he is.

Q. Now, Doctor, did you examine his ears? Did you know that his head was injured?

Mr. SMITH: His ears? His hearing?

A. I don't remember of having noted it.

Q. Not his hearing; but they never called your attention to any trouble that he had with his ears?

A. If they did, I have forgotten it. I don't remember.

Cross Examination.

Questions by Mr. SMITH:

How long did you treat him?

A. I treated him from July 31st to about the mid-

dle of October, I think it was he went home.

Q. From the wound that you found, or the condition that you found in his left arm, what did you think caused that injury?

A. From coming in contact with the wire.

Q. And how far up the arm did it extend?

A. Well, just the point of contact apparently was about here. Here was the point of the greatest burn, just above the wrist joint. In other words, about the center of the area of the destruction there. We would naturally assume that is where the contact was, because that is where the greatest burn was; and it was from that, radiated around, that destruction went on.

Q. Did that extend up the arm or not?

A. Well, not far up the arm.

Q. How far up the arm?

A. Just over the area where the skin sloughed off there.

Q. How big an area did the skin slough off?

A. It is about five inches—4½ to five inches.

Q. That is the extent that you think touched the wires?

A. No, that extent didn't touch the wire. That is, I don't suppose that extent touched the wire. I don't know.

Q. You don't know?

A. No.

Q. You don't know enough about electrical burns to know how much of that extent would necessarily touch the wire to get that sloughing off area, do you?

A. Not necessarily more than—

Q. Will you kindly answer the question?

A. That question cannot be answered that I know of.

Q. That is what I want to know. You don't know enough about electrical burns to know how to answer that question, do you?

A. No.

Redirect Examination.

Q. Doctor, you couldn't tell from the examination of the boy, the plaintiff, the extent of his burns, or how he received the burns, could you?

A. No.

Q. All that you can testify to is what you observed when you were called in?

Mr. SMITH: I think that is a matter for the court and the jury also.

COURT: The jury understands the question.
(Excused.)

JOHN BISHER, Jr., recalled for the plaintiff.

Mr. RICHARDSON: I desire at this time, your Honor, to offer this in evidence, and mark it as "Plaintiff's Exhibit 1." It is admitted by the defendant.

Mr. SMITH: We will agree that it may be marked as a mutual exhibit.

Mr. RICHARDSON: Yes. Let the record show that the cross-arm and four pins shall be introduced in evidence as the mutual exhibit of both plaintiff and

defendant.

Marked "Exhibit B-1."

(Excused.)

ALBERT SMITH, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. RICHARDSON:

What is your full name?

A. Albert Smith.

Q. Where do you reside?

A. Halfway.

Q. Halfway, Oregon?

A. Halfway, Oregon.

Q. Where were you residing on or about the 28th of last July?

A. Well, sir, I was working at the Union-Companion mine.

Q. You were working where?

A. At the Union-Companion mine.

Q. Union-Companion?

A. Yes, sir. That is the Cornucopia Mining Company.

Q. Whom were you working for on about the 28th of last July?

A. Well, sir, I supposed I was working for Mr. Betts.

Q. You were working for Mr. Betts?

A. Yes, sir.

Q. What kind of work were you doing on or about the 28th day of last July?

A. Well, I was sifting rock. Sifting rock out for the concrete.

Q. Sifting rock?

A. Yes, sir.

Q. Did you know Johnnie Bisher at that time?

A. Yes, sir.

Q. Where was Johnnie Bisher working at that time?

A. He was doing just odd jobs around there. I don't remember just what he was doing at the time.

Q. Did you hear any one give Johnnie Bisher any orders?

A. Yes, sir.

Q. On that day?

A. I heard Mr. Ed Mills tell Johnnie Bisher that What's his name?

Q. Buxton?

A. Mr. Buxton—to go down, that he wanted him on the line.

Mr. SMITH: How was that, now? State that again.

Q. Just repeat that loud enough so we can hear it.

A. Mr. Mills, Ed. Mills—

Q. Who was Ed. Mills?

A. Well, he was the man that I was working under—the boss.

Q. Working under?

A. Yes, he was the boss. He was the boss at that

time, that I was working under.

Q. What did he say?

A. He told Johnnie Bisher that Mr. Buxton wanted him down on the line.

Q. On what line?

A. On the electric line.

Q. Who was Mr. Buxton?

A. Well, he was the man at the powerhouse. I don't know him—don't know the man at all.

MR. SMITH: We move to strike out the evidence as incompetent, irrelevant and immaterial.

COURT: I will overrule the motion.

Exception allowed.

(Excused.)

L. W. SLOPER, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. RICHARDSON:

Mr. Sloper, what is your business?

A. Electric lineman.

Q. How long have you been working as electric lineman?

A. About eleven years.

Q. Are you familiar with the handling of live wires carrying a voltage of as high as 2300 volts of electricity?

A. Yes, sir.

Q. Have you, during your years of experience, handled live wires?

A. Yes, sir.

Q. Of that voltage?

A. Yes, sir.

Q. And higher voltage?

A. No, never handled any higher than that.

Q. Never handled anything higher than 2300?

Mr. Sloper, you heard the testimony of the plaintiff and the plaintiff's witnesses in this case, haven't you?

A. Yes, sir.

Q. I will ask you, Mr. Sloper, if a three-phase transmission line, such as has been described by the witnesses in this case that you have heard, consisting of copper wires a little larger than a lead pencil, strung upon poles about 25 feet from the ground and on a support known as a cross-arm, such as the one in evidence here, said transmission lines being the distance as you observe between these two insulators on this Exhibit "B-1" of both plaintiff and defendant, the cross-arm being nailed to a post about eight inches in diameter, and the third wire being placed on an insulator on this end of the cross-arm, would it be, in your opinion, safe for a repair man or any one else to make repairs, or to change these insulators, on uninsulated wires carrying a voltage of electricity as high as 2300 volts? State whether or not, in your opinion, a workman or repair man, without the use of rubber gloves, without the use of insulated handles on pliers, or any other lineman protectors, could make those changes without endangering themselves to great injury and shock by electricity?

Mr. SMITH: Objected to as invading the province of the jury, and as incompetent.

COURT: You might qualify him as an expert.

Mr. RICHARDSON: He is qualifying as an expert lineman.

COURT: Very well. I will overrule the objection. Exception allowed.

A. I should consider it very dangerous.

Q. Explain to the jury why you would consider it dangerous.

A. Well, the lineman's pliers are nine inches long, in the first place, and when he unwraps the wire off the insulator, he does it with his pliers, especially if he has on rubber gloves, which we always have in handling that kind of voltage, and unwrapping that, the pliers nine inches long, and the wire unwraps three inches, as he is unwrapping it around he is liable to hit his hand on the other side, in the first place.

Q. What are the customary tools and appliances that an electric lineman in working upon a power line that I have described, in which the wires are un-insulated, what are the customary tools and appliances that a lineman will use?

A. He first has his pliers insulated, and the company always furnishes rubber gloves, and in a job like that he should have what they call a sow-belly. It is about four feet long, made of heavy rubber, tested to 60,000 volts. The first thing he does is to put that sow-belly on the middle wire. Then he can lean over and work on the outside wire with safety, and change

that insulator; and then take his sow-belly off and change the inside one, and then turn around and change the other one.

Q. Now, Mr. Sloper, is it practical to insulate wires carrying a voltage of 2300 volts?

A. Yes, sir, they are always insulated. The pole and the wire being dry, if they had been insulated here there would have been no danger of any accident.

Q. If the wires had been insulated in this case, there would not have been any accident?

A. No.

Q. If it had been a good insulation?

A. Yes.

Q. Would insulating the wire have any tendency to decrease the efficiency of the plant?

A. No, sir.

Cross-Examination.

Questions by Mr. SMITH:

What kind of insulation have you ever seen on a cross-country wire of 2300 volts, up in the mountains?

A. The regular insulation that they put on wire of that voltage.

Q. What is it made of?

A. It is made of cotton and tar solution made up.

Q. What you call weather insulation, isn't it?

A. What we call weatherproof, yes.

Q. That is all there is to it? It is weatherproof,

isn't it?

A. It is called insulation.

Q. It simply protects the wire from inclemency of the weather, isn't that it?

A. And from the handling of it.

Q. And it is no protection whatever against handling a live wire, is it?

A. It certainly is, yes, sir.

Q. What protection?

A. If it is dry, it is absolutely safe.

Q. Do you mean to swear as an expert that you can insulate wire carrying 2300 volts with weather insulation?

A. Yes, sir.

Q. Do you know of a single wire in the United States where it is done so as to be a protection against shock?

A. I know of where it is always done.

Q. Where?

A. In Portland and other places.

Q. What do the high tension wires that come into this city carry?

A. Ten, fifteen, twenty, and sixty thousand.

Q. Clear up to 60,000. Do you know of a single 60,000 wire across country, that is carrying 60,000 voltage, that is weather insulated?

A. They don't handle anything as high as that.

Q. Will you answer the question? Do you know of a single transmission wire carrying 60,000 volts, that is insulated with weather insulation, coming into

this city?

A. They don't insulate high voltage wires.

Q. The higher the voltage the better it is to leave the insulation off, isn't it?

A. Well, that high it wouldn't do any good; it would burn off. It is too hot.

Q. Isn't it the fact the higher the voltage the more they leave off the insulation?

A. When you get above 2300, it is, yes.

Q. Why does 2300 happen to be your limit?

A. That is as high as they generally insulate.

Q. With this weather insulation?

A. With any kind of insulation that I know of.

Q. Did you ever know of a man being shocked by coming in contact with insulated wire, 2300 volts, when they only had weather insulation?

A. When it is wet, yes.

Q. When it is dry? Do you know what lightning arresters are?

A. Yes.

Q. Where are they put?

A. Put on poles—

Q. Where else?

A. To substation.

Q. On the inside, under the roof, aren't they?

A. Some of them are.

Q. Insulated?

A. No.

Q. With weather insulation?

A. No.

Q. Would you use weather insulation on a lightning arrester in a power house?

A. There would not be any need of having it there.

Q. Why?

A. You don't have to come in contact with that.

Q. But do you mean to testify that that light weather insulation of cotton and a little tar there, is to protect men that come in contact with the wires?

A. I don't know what else it is put on wire for, if it ain't for that.

Q. How long have you been in the electrical business?

A. About eleven years.

Q. What have you been doing?

A. Lineman.

Q. What school are you a graduate of?

A. I didn't graduate from any school.

Q. No, I thought not. Did you ever do anything else except work as a lineman?

A. Yes, sir.

Q. What?

A. I worked on a farm.

Q. From the farm you went to this electrical work?

A. Yes, sir.

Q. That is all you know about it, is it?

A. That is all I know about it, is the general work as a lineman, that is all.

Q. Now, I wish you would tell us, please, how those nippers or pinchers, or whatever they call them

—what is it they call them there, they are working with on the pole?

A. Pliers.

Q. How are they protected so you won't get a shock from them?

A. There's first three wraps of rubber on the plier, and then the outside has cotton covered over it to protect the rubber from wearing out.

Q. Suppose at the time a man is hurt he is not using his pliers, and he couldn't use his pliers on the work he is doing, the fact that the pliers are wrapped wouldn't save him, would it?

A. No.

Q. Where have you worked as lineman?

A. Well, I have worked in San Diego, and Los Angeles, and Portland—Walla Walla.

Q. Where are you working now?

A. I am not employed at the present time.

Q. How long since you have had employment?

A. A couple of months.

Q. Where did you work as lineman when you quit?

A. Bellingham, Washington.

Q. For what company?

A. Bellingham and Snoqualmie—Stone & Webster.

Q. Did you work as lineman on electric transmission line, or telephone line?

A. Transmission line.

Q. How long did you work there?

A. About two weeks.

Q. Do you know how long the average cross-arm is, as it stands on the pole out in the country carrying three wires—three phase system?

A. They are different lengths.

Q. Here is an arm that is four feet in length. State to the jury whether that is a safe length of a cross-arm for four pegs on it, with three wires?

A. Well, I would consider it very close.

Q. What do you mean by very close?

A. Between the wires.

Q. Between which wires?

A. Between all of them to be safe to work between.

Q. If it measures thirty inches from the post No. 3 to the end post on either side, with only three wires, leaving a thirty-inch center, you call that a very close place to work?

A. Thirty inches is the regular space to work between.

Q. Then it is not close, is it?

A. Those two wires isn't close. But the outside one is the one I have reference to.

Q. Suppose on this cross-arm as it is before you, we should take the left hand end of it—there is a wire at the outer peg, and the next peg on the inside is 12-inch center, and suppose that a lineman should just lift that wire over that pole and leave it over the third peg, he would still have the thirty inches there, wouldn't he?

A. Yes, sir.

Q. He wouldn't be crowded for space, would he?

A. No.

Q. Be plenty of room, wouldn't there?

A. Yes, ought to be.

Q. Be perfectly safe, wouldn't it?

A. Yes.

Q. So there could be no complaint made as to lack of space, could there?

A. There is thirty inches. That is the rule.

Q. You have worked in places where they carry 60,000 volts, with less than thirty inches to work between?

A. I never worked between that voltage in my life, and never shall.

Q. What is the highest voltage you ever went between?

A. 2300 is the highest I ever handled.

Q. Don't you know men handle 60,000 volts without fear of danger under those circumstances?

A. I don't know that.

Q. Do you know Charley Wolfington, of Lewiston, Idaho?

A. No, sir.

Q. Do you know any of the electricians of this city?

A. Yes, sir.

Q. Any of the men in charge of affairs?

A. Yes, sir.

Q. What is the highest voltage you know they

can handle when they are handling it alone?

A. 2300 is the highest they handle, take any man with any sense. When he handles any more than that he is taking great risks of life.

Q. Why?

A. Well, because you cannot tell what it is going to do.

Q. What is the smallest voltage that will kill?

A. Well, I have known 500 volts to kill.

Q. Have you ever known less than 500 to kill?

A. I know a man that got his hand burned, that is, all crimped up, on 220.

Q. How many wires did he touch to get that?

A. He just got a ground on it.

Q. And that is the same as two wires, isn't it? That is, if it were wet or damp, or he was standing on the damp ground somewhere, he would?

A. Yes.

Q. It is impossible for a man to get a shock from one wire unless he got a circuit from somewhere else?

A. If it is well insulated; but if he is on a pole, and the pole is wet, these sharp hooks, when it sticks into the pole where it is damp, it would give him a shock.

Q. That is the other contact?

A. Yes, sir.

Q. That is the same as if on the ground, isn't it?

A. Yes, sir.

Q. You take a dry pole, in the latter part of July, on a cross-arm like you see this is, a man on the pole

away from the ground 25 feet, it would be perfectly safe to touch one of those 2300 volts with one hand, wouldn't it?

A. No, sir.

Q. Suppose they have done it without injury, would that be any proof to you?

A. He might do it for a month and then he might get hurt.

Q. Because of his carelessness?

A. He couldn't help it. I have got shocked in very dry weather, when I have been handling it for a long time. Then I would take hold of it, and it knocked me pretty near off the pole.

Q. You would handle it safely 99 out of a hundred?

A. I had handled it, but it was dangerous to do it.

Q. Handle it safely 999 times out of a thousand, wouldn't you?

A. No, sir, not that big a percentage.

Q. How do you account for the shock when things are in perfect condition, with a dry pole, dry cross-arm, in the middle of summer?

A. You cannot tell when the pole is always dry. It is liable to be wet. You think it is dry, and it ain't.

Q. It is because the pole was wet and you didn't know it you got shocked?

A. Yes, sir.

Q. Then you didn't answer the question, whether or not it wasn't safe to handle it with a dry pole?

A. If the pole is absolutely dry, and you know it

is dry, and you cannot tell.

Q. Suppose it is dry and you don't know it?

A. If it is dry, you are all right.

Q. Do you know what these service wires in Portland carry out in the suburbs?

A. I know what some of them carry.

Q. How much?

A. Well, 2300 volts is what they carry out to distribute over the city.

Q. You mean that wires that carry over 2300 volts—let us see if we cannot get away from that—wires that come from that transmission wire, come into the houses, that service wire—what does it carry?

A. Some carry 11,000.

Q. That come into private residences?

A. Oh, 110 and 220.

Q. 110 and 220. That is the way they measure it in the city, isn't it?

A. Yes, sir.

Q. That is the standard under which this city is limited—three phase system, at 110 and 220?

A. Yes, sir.

Q. Those wires are weather insulated, aren't they?

A. Yes, sir.

Q. Did you ever know anybody to get shocked with that light weather insulation?

A. Yes, I have on 220.

Q. So weather insulation doesn't protect against a shock, does it?

A. Not with the insulation, I never knew them to get shocked—I didn't, no; not through the insulation they didn't.

Q. You say the company has always furnished rubber gloves?

A. Yes.

Q. How big gloves?

A. How big?

Q. Yes; how far up do they come?

A. They have long cuffs on them. Come up about there, I think.

Q. Gauntlet gloves?

A. Yes. Here is a pair of them.

Q. What effect do they have on your hand when you work?

A. Well, they are clumsy to handle.

Q. Hands sweat, do they?

A. On a very hot day they do a little.

Q. What company furnishes those gloves, do you know?

A. All of them do.

Q. Do they furnish them to boys that are required to work on the ground and carry material from pole to pole?

A. If they have got any wires to handle, they do.

Q. Well, will you answer the question? If they carry materials from pole to pole, do they furnish them for that?

A. No, not to carry material with.

Q. How large a voltage can you handle with rub-

ber gloves safely?

A. Well, it is about 2300, is the highest we ever do handle.

Q. You never tried it above that, did you?

A. Never will either. I think too much of my life for that.

Q. Although there is only one wire and the pole dry?

A. No, sir.

Q. What is the highest voltage of a man receiving and living?

A. High voltage, the higher you get, it is like taking strychnine. 2300 is about the right amount to kill a man. If you get over that, it has the effect like strychnine does. It burns worse than it kills. 2300 is about what generally kills a lineman—about nine-tenths of them.

Q. Answer the question, please. What is the highest voltage you know of a man receiving and living?

A. I have known a man to get hit with 60,000, and live; both hands burned off, and live.

Q. Now, can you conceive, or do you know of any duty that a lineman has to perform anywhere that requires him to touch two of these live wires at the same time?

A. That is something we try to keep from doing.

Q. Well, now, will you kindly answer that question? Is there any possible duty that he could be performing that would require him to touch two wires

at the same time?

A. Not that I ever heard of, no.

Q. If he would, his work would be pure carelessness, wouldn't it?

A. Well, we all make mistakes, you know.

Q. Kindly answer the question. Wouldn't it, in your judgment?

A. Well, I don't consider it that way, no. I know too many get it to do it.

Q. Now, we will take your weather insulation again. How long does that weather insulation last?

A. Well, it generally lasts three or four years in good shape.

Redirect Examination.

Q. Now, Mr. Sloper, if the transmission lines that are spoken of here, and poles on this support as described by the witnesses—if those lines had been insulated, in your opinion, would there have been any accident?

A. No, I don't think there would.

Q. Isn't it highly probable—not only possible, but highly probable, and oftentimes, that a man short-circuits by taking hold of a live wire when he is simply touching nothing, except his feet are holding onto the post, with his climbers stuck into the post?

Mr. SMITH: Objected to. This man is an expert. That is not the fact in this case at all. It is admitted that the boy touched the other wire. He has admitted that himself.

Mr. RICHARDSON: No, your Honor, I beg your pardon—I have not heard of any one admitting it. There has no one particularly denied it. The boy says he doesn't know. There is no evidence to show whether he touched the other wire. My theory is that he shorted in, he threw both hands up, and he came in contact with both wires, it is a cinch. But what I mean is, he could have gotten a shock by short-circuiting with the post and holding one wire. That is probable. My theory is that the plaintiff received his injuries by striking two wires. That is the impression. But the question I am asking is to show that it is probable, from this expert witness, that he could get a shock from that matter.

COURT: I think that is outside of this inquiry if that is your theory about the question.

Q. Now, what would be the proper distance—what is the distance in this city, and custom, between electric wires carrying a voltage of 2300 volts?

A. They are fifteen inches apart.

Q. Fifteen inches apart. And are they insulated?

A. Yes, sir.

Q. Have you worked upon the lines of the Portland Railway, Light & Power Company?

A. I have, yes, sir.

Q. And all of their lines carrying 2300 volts are insulated?

A. Yes, sir.

COURT: That is a rather leading question.

Mr. RICHARDSON: Yes, that is right. I beg your pardon there.

Recross Examination.

Q. There is one thing I forgot to ask him about—the use of this body protector. This body protector that you commonly call—I guess the boys do on the wires, call it sow-belly, don't they—that instrumentality?

A. Yes, that is what some of them call them, yes.

Q. Suppose a case like this, Mr. Sloper: That here is this cross-arm four feet long. Here is the outside wire in place, wired down to this insulator; a similar one on the other end; and they are working on the middle wire—how would they use that thing then?

A. Lay that over the middle wire, and take the outside one off and put on the other insulator, put it up, tie it in, and take the sow-belly off.

Q. No, the outside wires are already fixed, and they are working at the middle wire?

A. They wouldn't need the sow-belly then.

Q. Exactly. That is all.

(Excused.)

L. H. KENNEDY, a witness called on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows.

Direct Examination.

Questions by Mr. RICHARDSON

What is your business, Mr. Kennedy?

A. I am an electrical worker.

Q. How long have you been engaged in that work?

A. Seven years.

Q. How many years of experience have you had as a lineman?

A. Four years.

Q. Four years.

A. Four years and a half.

Q. Have you worked in this city?

A. Not as a lineman, only a short time.

Q. Are you familiar with the work of a lineman?

A. I am.

Q. What are considered by electrical linemen as being essential tools and appliances to work with?

Mr. SMITH: Objected to unless you limit it to this case. I have no objection to his showing the facts of the case, or putting in his case.

Q. I will refer to that. Taking into consideration, Mr. Kennedy, you have heard the evidence in this case?

A. I have.

Q. And you have heard the description of this electric power plant or transmission line, carrying a voltage of electricity from the power plant to the stamp mill of the Cornucopia Mines, haven't you?

A. I have.

Q. Now, for repair men to make repairs on a line of that kind, what would be considered by practical and experienced linemen as being the proper tools and appliances to work with, to make repairs and change insulators?

A. Well, I would consider the sow-belly and a pair

of rubber gloves the most essential; also insulated pliers; but then I would insist on the sow-belly and a pair of rubber gloves, or I would not work on it.

Q. What about the distance. Would twelve inches be a sufficient distance, or the distance from this insulator to this one, supporting live wires, carrying 2300 volts of electricity, and the naked wire uninsulated, would that be, in your opinion, considered a safe distance for an electric lineman to make changes of insulators, to work among?

A. I would consider that a very dangerous distance to work on.

Q. Is it practical to insulate an electric wire carrying 2300 volts?

A. It is.

Q. Have you with you any pieces of insulation of copper wires?

A. I have.

Q. What do you call that, Mr. Kennedy? (Referring to piece produced).

A. That is weather proof, triple braid, No. 1, copper solid.

Q. Is that used in the City of Portland on all transmission lines carrying 2300 volts?

A. Well, that is used, the same thing—

Mr. SMITH: Now, will you kindly answer that question, please.

A. Weather proof wire is used in Portland, triple braid.

Q. And you call this a triple braid, weather proof

wire?

A. I do.

Q. In your opinion, if these transmission wires that have been described by the witnesses in the trial of this case would have been insulated according to this insulation, would there have been any injury?

A. There could not have been.

Q. Do you know any other known and used insulation that, if it had been used and had been in good repair on the same transmission system, would there have been any injury?

A. Nothing that is practically different, materially different; different insulation, but materially the same for outside work.

Q. What is the custom of the average employer of requiring linemen to use rubber gloves?

Mr. SMITH: Objected to, as the custom is not pleaded in this case, or relied on. He cannot rely upon the statute and custom at the same time. If he wants to amend his complaint and rely on custom, he can do so.

Mr. RICHARDSON: It is not a question of relying on custom, if they failed to use the safety device, any safety device, for the purpose of protecting their employes.

COURT I will overrule the objection. You may proceed.

Question read.

A. In the last three years, they have all forced me to take rubber gloves or not work.

Mr. SMITH: We move to strike that out, if the Court please. That is no answer to the question that was asked.

A. Shall I answer it again?

COURT: I think that ought to go out. I do not think that is an answer to the question.

Q. What is the custom? Answer it as to the custom in your actual experience.

A. What is the question?

(Question read.)

A. It is the custom to require them to use rubber gloves, to accept rubber gloves. It is their option as to using them.

Q. Even in working on transmission lines that are insulated?

A. Yes, sir.

Q. Do you know, are you familiar with the transmission lines of the City of Portland carrying 2300 volts of electricity?

A. Well, not, no, sir.

Cross-Examination.

Questions by Mr. SMITH:

How long have you worked in the City of Portland?

A. Three years—two and a half years.

Q. Where do you work?

A. I have worked at inside insulation of electrical apparatus, the last two and a half years.

Q. That was where you got this, wasn't it?

A. No, sir.

Q. Where did you get it?

A. Outside.

Q. Outside of what?

A. Outside work.

Q. Outside work?

A. Here on the Portland Railway, Light & Power Company.

Q. What I am asking you is, where did you get this?

A. I got that from the supply house.

Q. You did not take it as a part of the thing you saw in use, did you?

A. No, sir.

Q. And you know that that is used on the inside of the power house, where men are exposed to the machines right along, don't you?

A. That is used on the outside.

Q. Answer the question. Isn't this the inside insulation that they use right around the generating machinery all the time, and around the transformers?

A. I think not.

Q. Do you know?

A. Not that I know of.

Q. Do you know of a single transmission line in this country where they use that on a cross country line?

A. I don't know about cross country lines.

(Witness excused.)

L. W. SLOPER, recalled for the plaintiff.

Direct Examination.

Questions by Mr. RICHARDSON:

Mr. Sloper, you have testified you are familiar with insulation. What kind of insulation is that? (Showing witness the piece produced by Mr. Kennedy).

A. Weather proof—used for outside work.

Q. Weather proof, used for outside work?

A. Yes, sir.

Q. Is that the class and kind of insulation that is used by the Portland Railway Light & Power Company in this city?

A. Yes, sir, that is the same thing.

Q. On the outside work?

A. Never used inside at all.

Q. That is never used inside?

A. That is weather proof. It is used for outside work. If it had been used for inside work, it would be what is called rubber covered. This is weather proof. This is used for outside absolutely.

Q. Mr. Sloper, is that the kind of insulation that they use on transmission lines that carry a voltage as high as 2300 volts?

A. Yes, sir. That is the same thing they use on 2300 volts.

Q. Now, I will ask you, in your opinion, if the copper wires in the case we have under consideration, if the transmission wires to the Cornucopia Mines, that were carrying a voltage from the power plant to the stamp mill—if that naked wire had been insulated

according to that insulation, similar to that, would, in your opinion, there have been any accident happened to the boy who was changing these insulators?

A. I think he would have been absolutely safe.

Cross-Examination.

Questions by Mr. SMITH:

You say that is used in Portland?

A. Yes, sir.

Q. Whereabouts?

A. All over the city, wherever they run 2300 volts.

Q. Is it used down here in the business section of the city?

A. No, it is not used down here. They don't have any outside wires in the main part of the city.

Q. They have underground wires in the city, don't they, down here?

A. Yes, sir.

Q. You say they use that insulation over through the rest of the city?

A. Over where it is distributed on poles.

Q. Do you know where a cross country wire is that uses that insulation?

A. Yes, sir, I do.

Q. Where?

A. Walla Walla.

Q. Over the country?

A. Running down from the plant, down Mill Creek, from the Mill Creek Station down into Walla Walla.

Q. The same type and grade?

A. The same type and grade. I would not say it was there now. It was there, though.

Q. How long ago?

A. About three or four years ago.

Q. Well, now, don't you know that the modern way of handling those transmission high tension wires is to leave them uninsulated, cross country wires?

A. What we call high tension wires is high voltage wires. 2300 volts always—2300 always is insulated.

Q. Always insulated?

A. Yes, sir.

Q. Do you know where the line is from here to Salem?

A. No.

Q. Salem, Oregon. Do you know where the line is around the vicinity of Pasco and Kennewick in Washington?

A. No, sir.

Q. Do you know where the line is from Yakima down to Prosser?

A. No, sir.

Q. Do you know the wires in Spokane, Washington?

A. Yes, sir.

Q. Are they insulated that way?

A. They didn't used to be when I was there.

Q. When was that?

A. It has been about eight years ago.

Q. Were you working at the business then?

A. Yes, sir.

Q. And you say they didn't insulate them that way then, did they?

A. No, sir.

Q. And you say this Walla Walla one was four years ago when you recall that?

A. Yes, sir.

Q. Do you know a transmission line that runs to Lewiston, Idaho, and Genesee, and around there? Do you know the Pomeroy plant?

A. No, sir.

Q. Do you know the plant at Baker City in this State?

A. No, sir.

Q. Do you know the plant of any small towns in this State, ranging from 5,000 to 15,000 inhabitants, or any of the surrounding country? Do you know what kind they use at Medford?

A. No, sir; I have been in California the last three years.

Q. What part?

A. Los Angeles.

Q. Underground wires?

A. In the main part of town, yes.

Q. You don't know whether in the cross country transmission wires in this state—you can't name one where they use that kind of insulation, can you?

A. I don't know of any 2300 volt transmission

lines now today.

Q. Do you know of any 229 line that uses it?

A. No, sir, I don't.

Q. Do you know of any 301 that uses it?

A. I don't know anything under 10,000.

Q. How long would that weather insulation last?

A. Three or four years—five.

Q. Now, you say that you know that that is plain weather insulation from the fact there is no rubber surrounding the wire?

A. That is called weather proof.

Q. Didn't you testify you knew that from the fact there was no rubber surrounding the wire?

A. Yes, sir, I did.

Q. If there were rubber there, it would be a better protection against electricity than it is, wouldn't it?

A. Supposed to be, yes.

Q. If that weather insulation you talk so much about happened to be a little old, it would be a deception and a snare? It wouldn't be any protection at all, would it?

A. It would be some protection. Your coat sleeve is some protection.

Q. It would be about as much protection as your coat sleeve, too, wouldn't it?

A. If a man happened to hit his hand with that, and didn't get against the wire, it would protect him.

Q. If he didn't strike the wire, he wouldn't get shocked at all, would he?

A. If the insulation was very wet, he would get shocked if he just touched the insulation.

Q. From your experience as a lineman, I will ask you whether it is too much work for one man to try to lift one of these wires from one peg to the other?

A. Well, it is according if the pole is on a hill, and there is a strain on the wire, it is a heavy lift to lift it over the top of the pole.

Q. You know that one man does it right along, doesn't he?

A. Yes, sir, one man is supposed to do it.

Q. And it is one man's work, isn't it?

A. Well, yes, it is one man's work, unless it is too heavy for one man.

Q. How is that?

A. Unless it is too heavy for one man. If it is on the hill, one man couldn't lift it over.

Q. What difference does the hill make, if he is working up on the pole?

A. The wires is drawn tight, and he cannot raise it up.

Q. Raise it over the hill, or over the pole?

A. Over the arm of the pole. If it has a tight tension on, he couldn't raise it over.

Q. Wires in the country are usually not drawn tight? They are loose and sag?

A. Some of them are drawn tight, heavy wire like that.

Q. Don't you know, in using those wires they have to allow them to sag, because of storms that hit the

pole in the wind, it makes it necessary?

A. No, I don't.

Q. You do not?

A. No.

Redirect Examination.

Q. Isn't it the fact if they are slack—isn't that one of the reasons why they should be insulated, so they don't get together?

A. Yes, that would protect them from striking together, protect the arm.

Q. What is the object of insulation?

A. Why, it is to protect the lines, and if they happen to fall on the ground, from people getting against them, or working amongst them, and every other way.

Q. Or in case of a storm?

A. Yes. In case of a storm, if they happen to strike together, it protects them from burning down. I have seen them wrapped together. They would go right on and work that way.

(Witness excused.)

Mr. SMITH: Do I understand that counsel is not going to offer that wire in evidence? I will ask him at this time.

Mr. RICHARDSON: If the defendants are not going to offer it, I will. I have no objections to having it offered.

COURT: It is supposed to be in evidence.

Mr. RICHARDSON: It is already in evidence, so

far as I know.

COURT: Very well.

Marked "Plaintiff's Exhibit 2."

Mrs. JOHN BISHER, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. RICHARDSON:

Mrs. Bisher, are you the mother of John L. Bisher, the plaintiff in this case?

A. Yes, sir.

Q. About what time of the day was it that Johnnie was brought to your home, injured, Mrs. Bisher?

A. Somewhere near two o'clock, Sunday afternoon, July 28th.

Q. What was his condition when brought to the house, Mrs. Bisher?

A. He seemed to be out of his head. He would wander. He knew me when he first came up, and they lifted him out of the automobile, and they started with him to the house. But he was flighty at times, —would know me just for a little bit, and then he would tell me not to twist his arms; that I was twisting them. And I had help there, and he kept telling me that we was twisting him when we wouldn't be touching him at all. And his color was very dark. It was purple—looked kind of purplish black, his face was.

Q. Was he suffering any, Mrs. Bisher?

A. He seemed to be in terrible agony at times, and then at other times, he would seem easy for a second, and then he would be in misery again.

Q. Did he groan, or give any evidence of enduring and suffering great pain?

A. Yes, sir, he did. And he would try to get up, and moan, and sometimes scream until they could hear him outdoors.

Q. Did you have a doctor with him at that time?

A. I had a doctor. The doctor met him as the automobile came up with him.

Q. How old is Johnnie, Mrs. Bisher?

A. 18 years old last May.

Q. Do you know what wages Johnnie was earning at the time he was injured, Mrs. Bisher?

A. I do not.

Q. You do not?

A. No, sir. He told me he was earning \$3.00 a day, and he sent me a check once to deposit in the bank of \$70.00, and he said that was his month's wages to deposit in the bank.

Mr. SMITH: We concede he was earning \$3.00 a day.

Q. What was his physical condition just prior to his injury, as to his general health, Mrs. Bisher?

A. He was very healthy, and very strong; had never been sick since he was a little boy, except when he had the smallpox in Baxer City.

Q. Had he ever had any experience in working with electric lines, and high voltage wires?

A. Not as I know of.

Q. You would have known it, if he had, wouldn't you?

A. Yes, sir, I think I would. I always tried to caution him to keep away from danger.

Q. Did you know that he was working on this line?

A. No, sir, I did not.

Cross-Examination.

Questions by Mr. SMITH:

You knew that Johnnie was very much interested in electricity, didn't you?

A. He never has said anything to me about electricity in any shape or form.

Q. He never told you what he wanted to do when he got big?

A. No, sir, he never did.

Q. Never spoke about being an electrician?

A. No, sir, he never did.

Q. Did you know that since he has been hurt, he has been studying this?

A. I did not.

Q. Not until today?

A. All he asked us was that he wanted a good education, to go as high as he could in educational matters. He was very ambitious to get a high education.

Q. He never told you along what line?

A. He never said anything. He took the com-

mercial course at the High School. Professor Churchill told me what course he took. He took the commercial course at the High School.

Q. He lived at home while he worked for Mr. Betts?

A. He did not. He came from school, he was home one week, and he went to the mines. He has been at school most of the time in Baker City, going to High School. Prior to that he graduated from the Grammar School at Whittier, near Los Angeles, California.

Q. How far was he working from home at the time he was hurt?

A. It must be about—I don't know the exact distance, but it must be thirteen—somewhere between twelve and fourteen miles to Cornucopia. I don't know just exactly the distance up there.

Q. Was he boarding over where he was working, or living at Cornucopia?

A. I didn't know where he was boarding, but since then they have told me he was boarding with Mrs. Snyder in Cornucopia when he got hurt; but I supposed that he was at the mine yet. I didn't know he was at Cornucopia at all.

Q. All you know is what they have told you, or what you had supposed about that?

A. About his being at Cornucopia—I didn't know he was there. I supposed he was at the mines, still working around outside.

Q. Now, what time do you say they brought him

home?

A. It was about two o'clock, or a little after, somewhere in the neighborhood of two. Dr. Walsh phoned to me, and I looked at the clock, and it was just half past one, Sunday afternoon, July 28th.

Q. Now, when he came home, did he seem to be reviving or sinking?

A. Well, he didn't seem to know much of anything. He was like one dazed, and he seemed to be wandering in his mind. I couldn't seem to get much of anything out of him. He seemed to be like he didn't know what he was doing, nor nothing.

Q. Did he know you?

A. He knew me when he first came up, but he didn't seem to know me a little while afterwards, and then when I came in again, he would seem to know me.

Q. Just sort of momentary memory?

A. Yes, just seemed to be.

Q. You know that he is still pursuing his studies, don't you?

A. He is going to High School. He expects to graduate this spring. I suppose he is finishing in the Commercial Course.

Q. He has always done good work in school, hasn't he?

A. As far as I know he has. Professor Churchill told me that it was pretty hard for him now, though, because he was so very nervous.

Q. Now, you operate, or your people operate a

telephone line in that country?

A. Yes, sir.

Q. How long have you operated that?

A. Well, we have been operating a telephone nearly ever since we have been there for the last about nine or ten years.

Q. And who has done the work on the line?

A. Mr. Bisher, or he has hired a man. When he didn't do it himself, he hired somebody.

Q. Do you know whether Johnnie ever worked on the poles?

A. Yes, Johnnie helped sometimes, when we couldn't get men, and his father would be gone, or his father would want help, and he would go out with another man, and put up telephone line, if a pole had fallen down, or repair it if it broke, or something like that.

Q. You knew that he was acquainted with how to work on a pole?

A. Why to a certain extent, but not to any great extent, because we never left him alone on it. We always had somebody with him.

Q. How many years had he worked on telephone poles for you?

A. Oh, once in awhile, he would help for the last four or five years. Every once in a while, he would go up a pole—just now and then when something was in trouble. He first climbed a pole without any climbers. We would not allow him to have climbers for fear he would fall with them.

Q. Afterwards he got so he could use climbers all right, didn't he?

A. I don't know. I never saw him up on a pole in my life.

Q. He was your trouble boy on the telephone line?

A. Not always. We never allowed him to go alone, because fixing telephone line, one man cannot do it alone.

Q. Frequently he did that, fixed trouble on the line?

A. He never was at home very much to do it, he was always in school.

Q. Will you please answer the question? Did he frequently do the trouble work on the telephone line?

A. When he was at home in the summer, probably he would go out once or twice in the year.

Q. Do you know whether that trouble work required him to adjust the wires when he was up on the poles?

A. I don't know anything about that.

Q. Did your system have cross arms on the poles?

A. No, sir, not when he worked on it. No, sir, only just one or two in town. But at the time he used to work on it, there wasn't any cross arms.

(Witness excused.)

LAWRENCE PANTER, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. RICHARDSON:

How do you spell your name?

A. P-a-n-t-e-r.

Q. Panter, is that it, or Painter?

A. Panter—no "i" in it.

Q. Where do you reside, Mr. Panter?

A. Cornucopia.

Q. Where did you reside on or about the 28th day of last July?

A. At my place in Cornucopia.

Q. Are you acquainted with John Bisher, Junior?

A. I am.

Q. Were you acquainted with him on the 28th day of last July?

A. I was.

Q. Did you see him at work on the transmission line of the Cornucopia Mines Company?

A. On that day.

Q. On that day?

A. Yes.

Q. How came you to notice him that day?

A. I was out in my field picking berries.

Q. Did you see him up the pole?

A. I did.

Q. Did you see him up more than one pole?

A. Just on that one.

Q. One pole. What attracted your attention?

A. I was close by. I could see them work, and

heard them talk.

Q. And you heard him halloo.

A. I heard them talk when they were working there.

Q. Do you know what happened while he was working on the pole on that day, and about what time?

A. About ten o'clock in the forenoon.

Q. What happened?

A. Why, when it happened, I didn't see, but I heard directly groaning, my attention was directed to it, and just then the other man had him down partly off the pole.

Mr. SMITH: I didn't hear that.

A. When this happened I didn't see. I was to work—I was too busy myself. But I heard him groan then directly, and then that pulled my eyes to that direction, and I saw he was up—the other man lowered him down about a third way of the pole. Meantime the team came along just then, and he rushed up, and they relieved him from the pole.

Q. That is all you know about the facts in this case?

A. That is all I can tell.

Cross-Examination.

Questions by Mr. SMITH:

You say you saw him working?

A. I saw him to work, yes.

Q. What was he doing?

A. They were up on the cross arm, both of them.

Q. That is all you saw?

A. They were working there. That is all I could see.

Q. Could you see what they were doing?

A. They were repairing insulators.

Q. Could you see it yourself?

A. I could, yes.

Q. Do you know what part of the work he was doing?

A. No. No, I do not.

Q. Then you cannot say whether he was there working, or whether he was just watching the other fellow, can you?

A. Oh, no, they were moving about, they were working.

Q. You were a quarter of a mile away practically, weren't you?

A. Oh no, 500 feet.

Q. A tenth of a mile?

A. 500 feet at the most, I guess.

Q. And you don't claim to know anything about how this happened?

A. No. I was busy picking berries, and the attraction came when I heard them hallo—groan.

Q. Picking strawberries, weren't you?

A. I was.

(Witness excused.)

Mr. RICHARDSON: Do you admit the expectation of life?

Mr. SMITH: What does it say?

Mr. RICHARDSON: 43.53.

Mr. SMITH: The defendant admits the American mortality table shows an expectancy at eighteen years of 43.53 years.

Mr. RICHARDSON: We will rest, I believe, your Honor.

Mr. SMITH: Defendant moves for a non suit, upon the ground that the evidence of the plaintiff and his witnesses does not show any negligence of the defendant whatsoever. It shows that the plaintiff does not know how this injury occurred, and the facts of the injury are left to inference.

COURT: I will overrule the motion. You may proceed with your testimony.

Mr. SMITH: We will note an exception, your Honor.

DEFENDANT'S EVIDENCE.

W. H. HARBERT, a witness called on behalf of the defendant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. SMITH:

What is your name, please?

A. W. H. Harbert.

Q. And your age?

A. 26.

Q. Your residence?

A. Cornucopia.

Q. And your occupation?

A. Electrician.

Q. Are you the person who has been referred to in this testimony?

A. I am.

Q. You were the lineman out there at that time, were you?

A. I was.

Q. How long have you been following electrical work?

A. About seven years.

Q. Where have you followed it?

A. I have followed it at Cornucopia, Portland, Eugene, Astoria, and Chicago, Illinois.

Q. What particular course of study have you followed?

A. Well, I have taken Scranton. I have gone to the U. of I, and to the U. of O.

Q. What is the U. of I.?

A. University of Illinois. I have gone to the University of Illinois. I have never graduated.

Q. How much study did you do at the University of Illinois along these lines?

A. I was there pretty close to a year.

Q. And the U. of O., is that the University of Oregon?

A. Yes.

Q. You were there about how long?

A. I was there about a year.

Q. How long did you take any course in Scranton?

ton—that is, a correspondence course?

A. Yes. I have finished up one course, and been about a year and a half in a higher branch.

Q. What course is it you have finished?

A. I have finished the course called electric line construction. I am taking the complete electrical engineering course at present.

Q. During all the years you have been working, you have always been studying, have you?

A. Yes, sir.

Q. How many years have you been a lineman?

A. I have been a lineman ever since I have been in the business.

Q. I will ask you to refer to this cross arm. Do you now identify that as the particular cross arm upon which this work was being done?

A. Yes, that is the same one.

Q. How long had you worked there on this particular line?

A. I went to work there on July 11, 1912, I think, pretty close to that.

Q. What kind of wires did they have there, as to being insulated or not?

A. How is the question again, please?

Q. These high voltage wires up there, were they insulated or not?

A. No—bare copper.

Q. Now, from your experience as a lineman, what will you say is the proper way as to a cross country high voltage wire, to insulate it with weather insula-

tion or leave it bare?

A. I wouldn't have much to do with it with insulation on. That is, I would touch it more carefully than if it was bare. I prefer bare wire myself. I haven't heard in my life of a transmission line using insulated wire, and I have seen a few of them.

Q. Tell us where you have seen them?

A. Out from Portland here to Cascade Locks, all the way along you will notice high tension line, bare copper, about No. 2, carrying about 6600 volts, I judge from the insulation, but nothing less than that. And also from Eugene to Albany, and most any of these transmission lines out of Portland here, you will find the bare copper.

Q. Why is it you prefer bare copper to this weather insulation?

A. Well, because weather insulation is good for a few months. After rain, and the dry weather, this insulation punctures. A man will take the chance with that he would not on bare copper.

Q. It would be a deception to him, would it?

A. Yes, I should consider it dangerous.

Q. Isn't it a fact that, in your business, this weather insulation is regarded as much more dangerous than the bare wire, for that reason?

A. Yes, it is regarded that way.

Q. You are always on guard on a bare wire, aren't you?

A. Yes, sir.

Q. And the weather insulation, it is impossible

for you to tell whether it is good or bad—isn't that it?

A. No, you cannot tell. That is the proposition.

Q. Now, this weather insulation, is that insulated to control the electricity or keep it confined, or just on account of inclemency of the weather?

A. Well, it is used in cities around buildings, it is required as a fire protection, but merely as a fire protection.

Q. Now, do you know what a cable is?

A. Yes, sir.

Q. Where they use a cable?

A. I do.

Q. Where do they use that?

A. They use it underground, and in mines, submarine.

Q. They don't use it out in cross country like this?

A. Not on high tension. The telephone company uses it in the city sometimes.

Q. Do you know also of insulation that is used in power houses where the wires come out of the machines, down around the machines, bringing it up, running from one machine to another, do you know of that insulation?

A. Yes, sir, that is leaded cable.

Q. Do they ever use that kind or character of cable out on transmission cross country line?

A. That couldn't be thought of at all—impractical on account of the expense. It would cost you \$5,000,000 to run five miles.

Q. Now, do you know anything about the danger

that is encountered in handling these bare wires up on poles?

A. Well, in what way?

Q. How many years have you handled bare wires on poles?

A. Oh, I guess on and off, seven years. I think that was about along the first work I ever did.

Q. Referring to this specific line here, will you tell the jury—illustrate, just step down, please, to this arm, will you, Mr. Harbert, and stand facing the jury. (Witness comes down). Now, we will say you are up on a pole.

A. Well, if I was on a pole, the first place I would be standing would be—a wire here and a wire here, a wire here—I have my arm over this wire, and do my work right here.

Q. In that 30 inch space?

A. In that 30 inch space. Here is the other wire over in there. I put my arm over this wire, and do whatever work I have to do.

Q. Crowded for room at all?

A. No, I don't see how I would be crowded. Plenty of room there with 30 inches.

Q. That is the regulation distance, isn't it?

A. Yes. I could swing out here as far as I wanted. If I didn't have enough room, I could swing out here two feet, if I wanted to, and work this wire here. But I should consider that is a fair distance anyhow. I don't need to.

Q. No danger of any induction from one wire to

another, is there?

A. It would take about 200,000 volts to arc that far.

Q. To arc a foot?

A. Yes. It takes about 210,000.

Q. You never heard of arcing from one wire to another where there is 30 inches between?

A. No.

Q. Do you know the longest arc that is drawn from one of these wires?

A. You take 1,000,000 volts—one wire at each end, you burn the copper. That is on account of high frequency. It is sixty cycle. It has not taken an arc.

Q. What do you mean by sixty cycle?

A. That is frequency.

Q. Frequency of the alternating current?

A. Yes, pulsation. The alternating current is a pulsating current.

Q. And they use that on transmission wires in this country for lighting purposes?

A. Yes, it is standard voltage for light and power. Straight power voltage is usually thirty cycles, but where there are lights to be used, they use sixty cycles, because a thirty cycle will dim down and come to brightness, while sixty cycles is so swift, you cannot notice the light die down and come up again.

Q. Which one of these insulators were you taking off or doing away with?

A. I was working on the middle one.

Q. Taking away the glass?

A. Taking away the glass and putting on the porcelain.

Q. Why was that?

A. Because the test—the break-down test, 'on the leakage of this insulator in the weather is only supposed to be tested 2300; punctures and leak in damp weather.

Q. What were you doing? How were they increasing the efficiency of the plant that required this higher porcelain?

A. We were stepping up the voltage from 2300 to 6600 volts.

Q. Did this young man Bisher know about that? Did you talk to him about it?

A. I don't remember. I think we talked about these subjects, what we were doing, putting in the appliance. That was, of course, most of our conversation, was electricity.

Q. Do you know whether he was studying electricity at that time, or not?

A. I couldn't say that he was.

Q. What interest did he take in the work?

A. He took a very good interest in the work, everything that was going on, asked me lots of questions, and I tried my best to answer everything that I could.

Q. Gave that information to him?

A. Yes, sir.

Q. Now, after you had finished on the outside wire over there, will you demonstrate to the jury how

you would fix the inside wire?

A. Well, after that wire is finished there, standing here, the other wire is out there, I untie this wire and take it—of course I am down about this position,—lift it, lay it over there, swing it over here somewhere, and go to work on this wire. The wire is on the other side of this plate.

Q. That gives you a thirty inch space again?

A. It gives me thirty inches, yes.

Q. Safe, is it?

A. I don't see how it can be otherwise, 18 inches across.

Q. Isn't that the customary way of handling such things as that?

A. Well, in this case it is, yes. It is a protection. It is not necessary. I could take and work four wires on there just as easy, but where there is only three wires, it might take a little extra precaution.

Q. So that with three wires on that four pin cross arm, you had more space than is customary?

A. Yes. It was a four pin cross arm.

Q. How far from centers to centers?

A. 12 inches, 18 inch in the middle, something like that.

Q. You have heard something about this body protector, they term a sow-belly on the work?

A. Yes, sir.

Q. After finishing the two outer pins, could you in any way use that thing to protect you while you were working on the middle one?

A. I don't see how I could, no.

Q. Do you know whether it is ever used on that kind of a cross arm out there?

A. Never. It is never used in a three phase transmission line, because there is two standard ways of running transmission lines. There is two standard ways of running transmission line—one is by the way we have here, running two wires on this side, the next pole run them over on this side; and the other is to run two wires here and the saddle pin here. So either way you can make it, you have no use for a sow-belly, as they call them, for protection.

Q. Where do they use that body protector?

A. That is used in the city where there is more different wires on the same pole, where a lineman must stand against one wire, and reach over maybe a couple of wires to do what work he is doing.

Q. That is where it is necessary for him to throw his body agains some of the wires to get at the other, is it?

A. Yes, but he must lean against this wire, for his own protection, and reach over.

Q. The way you were handling that, there was no use of that at all?

A. No. I wouldn't care for it at all.

Q. Do you remember at the particular time in question, how much work had been done on this cross arm?

A. I do.

Q. Tell the jury, please.

A. These two outside wires had been tied in.

Q. What do you mean by that?

A. Well, the tie lines had been taken off, the insulators changed, and the wires tied back again.

Q. They were in place, were they?

A. They were. This wire was laying over here. It had been already taken off this glass insulator, and the insulator had been thrown down on the ground. The wire was laid over there. I had just started to put my insulator on here, like that, as the accident happened, the wire being laying over there.

Q. Now, how much of your body was above the wire?

A. Well, I was standing about this much up. Usually my arm comes along here. I always put my arm over the wire.

Q. What work could Johnnie Bisher do in the position that he says he was in?

A. Well at the time of the accident, he couldn't have done a thing.

Q. Was he doing any work at the time of the accident?

A. No, at the time of the accident he was standing on the pole, he was leaning with his left arm hold of this wire, just as a rest, leaning back. He was standing in this position. And when I seen him, that hand was just thrown up, and hit right across the wrist. The contact on the right hand was across the wrist. It might have been up further, too. But the whole hand just was stuck there. Of course, when it hit the

other wire, it stuck.

Q. What did you do?

A. I loosened my safety, and pulled out my hooks, so they would be loose, and reached over and knocked that arm off.

Q. What do you mean by your safety?

A. The belt. If there was anything there, that would make me stick, we might both have been hurt. It took me down the pole pretty much already. The strain might have lifted me right off the pole.

Q. You looked to his safety, then, the first thing?

A. Certainly.

Q. You struck his arm?

A. Certainly.

Q. What happened to you?

A. Well, it knocked me off the pole.

Q. Your belt was unfastened at that time?

A. Yes. The first thing I done was to unhook my safety, kind of loosen up my spurs a little bit, so in case anything did happen, it would knock me off.

Q. Did you request him to come up there to help you at that time?

A. No, sir.

Q. Did you at any time request him to work on these poles on that work with you?

A. No, sir.

Q. What was he there for?

A. Well, he was there to help me carry insulators, send the insulators up to me.

Q. How did you handle getting insulators from

him up to you?

A. I had a rope tied on my belt to a concentrate sack, similar to a gunny sack, tied on the end, to pull them up.

Q. He would be down on the ground, would he?

A. Yes, sir.

Q. A position of perfect safety?

A. Yes, sir.

Q. Will you kindly explain to the jury whether his presence on that pole made it more dangerous for you?

A. Well, yes. Say that I should be working on a wire here, and for some reason he could rest on this other wire, one wire couldn't hurt him no way or manner at all; but if our foot should touch, or our elbow, or anything, that would tie us both to a wire, that would complete the circuit.

Q. That would get you both, wouldn't it?

A. Yes, sir.

Q. Did you ever explain that danger to him?

A. Yes, sir, I think I have.

Q. Now, you heard some testimony here about rubber gloves.

A. Yes, sir.

Q. Did you ever work with them?

A. No.

Q. Why not?

A. I am scared of them.

Q. Tell the jury why.

A. Well, a man might put a pair of rubber gloves

on, come up a pole, and you would puncture them, take hold of the wires, why, it would be the same as having a bare hand, if there was any kind of holes in them at all—if there was any contact, if you had the contact. With one wire there is no contact—12,000 volts is just as easily handled as 2300. I handled 7,000 volts just a little while before I came down here; damp weather, too,—snow and cold. But you take the gloves, and slivers in the poles, or anything like that cut the gloves, a man might take chances with them, you know, thinking they were safe.

Q. Do they make your hands sweat?

A. They are considered a death trap with most linemen; that is, hot wire men.

Q. You are what they call a hot wire man?

A. Yes, sir.

Q. Did this company up there ever direct your attention to the gloves?

A. Yes, sir, Mr. Betts asked me if I wanted rubber gloves.

Q. What did you tell him?

A. I told him no.

Q. You were the lineman, the only lineman there, were you, at that time?

A. Yes, that is what I hired out for.

Q. You say you didn't use these gloves?

A. No, sir.

Q. Did you hear the testimony here about these wrapped nippers?

A. Yes, sir.

Q. Well, now, will you explain to the jury about the wrapping on the nippers, or twisters, whatever you call them.

A. I cannot see what use that should be. Now, rubber gloves and wrapped nippers and things like that may be used on trolley lines, or something fallen on the ground, a person to get hold of it and stand on the ground. But I wouldn't risk it then. I would rather take a little board and pick it up—put a board under my feet. And the pliers, I cannot see why they would be used, because you have got to have this hand on, you have got to have hold with one end. What good is the insulation on the other, as far as slipping the other wire there. I will take a wire and put on here and short it any time.

Q. If, in your work, you were working with these nippers, and a piece of wire you were tying onto that insulator there should happen to hit one of the other wires, would it hurt you?

A. No.

Q. Why?

A. Because the electricity wire is a good conductor. Electricity takes the shortest circuit. It will run across there. If you take a tie wire onto this, it will hit it over further.

Q. It runs the wire rather than the flesh, does it?

A. Yes, takes the shortest route.

Q. Just like anything else, taking the easiest conductor?

A. Yes.

Q. How long have you worked on wires where three of them were strung on cross arms like that? Just tell the jury, please.

A. I worked up there, I worked on it all the time the last eight months on this one particular job; that is, different times. I worked on it steady most of the summer. I do work on the line now. It is a higher voltage, of course. We have 6600 volts on the line now.

Q. They have stepped it up to 6600, have they?

A. Yes, sir.

Q. Running over the same size wire?

A. Yes, sir.

Q. You handle these wires, 6600, the same way, do you?

A. Certainly.

Q. Any more danger with the 6600 than with the 2300?

A. Not a bit.

Q. Is it possible for you to get a shock with just one contact?

A. No, not unless the voltage gets away out of sight. Take 12,000, anything up to 12,000 volts, there is no need to worry.

Q. Anything short of 12,000 doesn't throw off any atmosphere of electricity?

A. No, 12,000 volts, if a person had damp poles, such as that, it might make a little difference.

Q. When it gets up to 20,000, does it throw off a sort of leakage?

A. Well, yes, there is a brush a little.

Q. That static electricity is not sufficient to injure a man, is it?

A. No, the static cannot injure a man. It is dryness that everything has to be to handle it. A very little dampness on 20,000 a brush will occur, make an arc and conductor.

Q. Would there, in your judgment, be any static electricity on a 2300 volt wire?

A. No.

Q. Any perceptible amount?

A. Can't never feel it unless you have some kind of ground, but that would not be called a static.

Q. When this young man got hurt, he was not hurt by any static condition there?

A. No, sir, he had hold of both wires, or else he hit one hand against the other wire.

Q. Came in contact with them, did he?

A. Yes, sir.

Q. Do you know of any conceivable duty, is there any possible duty, that a lineman has to discharge that would require him to catch two of those live wires at the same time?

A. No, sir.

Q. Now, there is a complaint here about a telephone wire on these poles.

A. Yes, sir.

Q. How far down was that telephone wire?

A. Seven feet, I think.

Q. From its position, was there any danger, or

was there any connection, any possible connection, between that telephone wire and the injury above?

A. No, there was about 2½ feet below where my feet were.

Q. What substance is a telephone wire made of?

A. Iron wire.

Q. Iron. Do they carry any electricity, as a rule?

A. Well, yes, there is high frequency in telephone wire, battery service.

Q. Just a light battery service?

A. Yes, sir.

Q. What you term high frequency, but not much voltage?

A. Yes, sir.

Q. Not much ampre?

A. No.

Q. Very light?

A. Yes.

Q. No danger in handling a telephone wire, is there?

A. No, I never found any.

Whereupon proceedings were adjourned until 10 A. M.

Portland, Ore., April 10, 1913, 10 A. M.

W. H. HARBERT, resumes the stand.

Direct Examination continued.

Questions by Mr. SMITH:

Now, I believe you stated yesterday that you had put on the new insulator on both the outside pegs?

A. I did.

Q. The wires were tied in?

A. Tied in, yes, sir.

Q. Now, how many poles are there on this line, do you know?

A. In the neighborhood of eighty-nine or ninety. Eighty-nine.

Q. About how long is the line from the plant to the mill?

A. Well, about 100 feet apart. It is about 8900 feet—a mile and a half.

Q. Now, did you do the work of completing that line, putting the insulators on?

A. I did.

Q. Did you ever have any helper there on the line?

A. No, sir.

Q. A man hired to help you?

A. No, sir.

Q. You completed it alone, did you?

A. Yes, sir.

Q. Now, do you know what Johnnie was doing while he was up there on that pole?

A. Well, he was up there to see what I was doing. He wanted to learn the business, and I was showing him everything I could.

Q. Did you hear him testify yesterday that you had told him to come up and help you, or words to that effect?

A. Yes, I did. I heard him testify.

Q. Well, had you ever done so?

A. No.

Q. Do you know, can you tell whether his presence there, an inexperienced man or boy, either one, say an inexperienced man, would be as safe for you with an inexperienced man there, as it would alone?

A. No, it really would not, because he would make the contact there. That is, one person on one wire, and maybe the other would be touching the other wire with your foot, or any contact whatsoever, would hold you both there, the same as taking hold of the two wires.

Q. You heard him state yesterday, did you, about his position on the pole, about his chin being up just above the cross arm so he could see?

A. Yes, sir.

Q. Was there any work he could do in that position?

A. Well, not in that position, no. He would have to be a little higher to do any work to speak of.

Q. Now, as he stood facing you on the pole, you were working on this peg I believe?

A. That is the one.

Q. Which way was your body turned?

A. Let's see. My right hand was on that side. I was on the other side of that cross-arm.

Q. You were over on this side, and you had your right side turned towards the cross-arm, did you?

A. Yes, I had it toward that glass insulator. My right side was about where that glass insulator is, and I was just about the middle of that.

Q. Now, part of your body was touching that outer wire, was it?

A. Well, I cannot say to that. It would not have made any difference. I could have leaned up against that because I was not touching anything else but the insulator at the time.

Q. You were putting this porcelain insulator in where the glass was, one like that?

A. Yes, I just started to put that on.

Q. Will you tell the jury what this groove across the top of this is for.

A. That is to lay the wire in. It is a top groove insulator.

Q. How do you tie it onto the insulator itself?

A. I take about a 42 inch tie wire in tying that on it, put the wire under here, double it over the wire, and then across to here, and wind it around, make a little do-up on the end.

Q. You do that by yourself, do you?

A. Yes a person could do it themselves easy, because a person standing here, they are working right here over this wire, one on each hand.

Q. Now, do you remember before you went up there to work on the line, do you remember when Mr. Buxton showed you how he wanted the wire tied?

A. I do.

Q. Were you tying them the way he told you?

A. Yes, sir.

Q. Do you remember at any time that Mr. Buxton showed Johnnie how to tie the wires?

A. I don't remember a thing about it. If he did, I surely must not have been there, because when he showed me we were in the store. We had a supply room in the store underneath the building. We sat there, and so Buck wanted a special tie, that was the way he wanted; and I told him I would tie any way he wanted. We sat down, I expect half an hour, and talked over different ties. I never saw Mr. Buxton after that, until after the accident. That was only a couple of days.

Q. Did Mr. Buxton at any time, in your presence, instruct Johnnie how to make a tie?

A. No, not in my presence.

Q. Do you remember whether Johnnie was present at that time, or not?

A. In the basement? No Mr. Buxton and I was alone. He usually came up and give me orders what to do, came up to the house.

Q. Mr. Buxton was the head electrician there, was he?

A. Yes, sir.

Q. Now, to make this plain, the work that you were doing at that time when Johnnie got hurt, was work in which you could not use your pliers at all, was it?

A. No. I was just screwing on the insulator, I granced up, and he was stuck on the wire.

Q. About this weather insulation that they have spoken of, if you had a wire that was insulated with weather insulation, and you would try to make a tie

on it there, what would be the first thing you would have to do with the insulation?

A. I would have to cut clear through to the copper, make the tie whole. You cannot tie it with insulated wire. You have to use iron wire to tie it. And you would have to cut right through the insulation and hit the copper.

Q. The first thing you would have to do would be to remove the insulation, wouldn't it?

A. I would just squeeze the wire right through the insulation.

Q. Well, now, isn't it also true that when the weather insulation is broken once thereafter the rain or the snow or the weather conditions affect it very materially, and it deteriorates quite rapidly?

A. Yes, it deteriorates rapidly after a puncture. After the first puncture, why, it will deteriorate very fast after that.

Q. Do you know what the average life of weather insulation is, as against the weather?

A. Well, I should judge, I couldn't say for sure, but between three and six months.

Q. That is, as to weather itself?

A. Yes.

Q. Well, now what would be the practicability of any company keeping its wires insulated with new weather insulation?

A. Well, if they had to insulate their wires every time that the wire punctured, they would have to construct a new line every few months; that is, to

keep it guaranteed to be insulated.

Q. Would that be practicable for any company?

A. I shouldn't think so.

Q. Why not?

A. Why, the expense. You would have to shut down. You cannot put a new wire in unless you use a double pole line.

Q. Now were you present—did you have any talk with Johnnie after he was hurt?

A. Well, yes, I was there. I was with Johnnie after he was hurt. Went down in the machine with him, and was at the house for, I expect, an hour afterwards.

Q. Were you there when the doctor was caring for him in the store after the injury?

A. I was.

Q. What did you do?

A. Well, I was there, and helped rub his arms for awhile, till Mr. Ladd come, and Doc and Mr. Buxton, they rubbed, why then I went out, because I was about all in about that time.

Q. Pretty tired, were you? Under the strain you were under?

A. You bet.

Q. Now, did you notice yesterday the condition of his left hand and arm?

A. Yes, sir.

Q. And the fact that his right arm is off up close to the elbow?

Mr. SMITH: How many inches below the elbow

do you know, Mr. Richardson?

Mr. RICHARDSON: About two or three—two inches.

Q. Well, whatever it is, the jury saw. Now, you claim that he had his hand, he had hold of the wire with his left hand?

A. With the left hand, yes, sir, was the hand he was resting on the wire, on this side.

Q. Now, I wish you would please tell the jury whether, if you have a tight hold on a wire, and voltage goes through it, we will say 2300, and with the other hand you touch another one which hand is it that is going to get the burn?

A. Why, the one that you touch, because if you have a tight wire, you will get more of a shock, but less burn. Wherever it arcs, wherever the wire is right close to the hand, but not quite touching, it will arc across; that is, after it touches once, it draws an arc.

Q. What do you mean by an arc?

A. That is the fire.

Q. Just like a stroke of lightning?

A. That is the burn. The arc, that is the fire.

Q. From the fact he had a burn above the wrist, started up to the arm, and his hand showed no burn, how would you explain that?

A. Well, if he had a tight hold on that wire whenever he caught the current by the contact of the other hand, it could draw his arms in any position. It holds the muscles.

Q. You say his muscles were badly contracted when you went in the store?

A. Yes.

Q. Which muscles?

A. Why, his arms. His fingers.

Q. His muscles were knotted, were they?

A. Yes.

Q. You helped rub out those knots?

A. Yes, sir.

Q. Now, I will ask you if he was standing as I stand, with the pole in front of him?

A. Yes, sir.

Q. And you say he had hold of this wire with this hand?

A. The left hand.

Q. And some way he must have thrown this hand up and touched the other?

A. Yes, that is correct.

Q. Now, when that happened his body could not go forward for the reason of the pole, could it?

A. No.

Q. Therefore, it went back, drawing his arms?

A. Yes. He was leaning this way, resting on that. I didn't see him throw the arm up, but it must have been the second that it hit there.

Q. Any flash, or anything of the kind?

A. No I never heard a sound. I just glanced up, and he was unconscious, strained that way, all doubled up.

Q. Now, how long was it after you first saw him,

till you got him to the store, till you got medical aid?

A. How is that again, please?

Q. How long was it after you saw him in that trouble, until you got the doctor there?

A. It could not have been over half an hour. We were about three-quarters of a mile from town. Just as it happened, the boy came up with the team, and we ran the horses all the way up town.

Q. You took him down from the pole alone, did you?

A. Yes. When I got him down to the telephone wires, as he said yesterday. He was so heavy, I got this boy down below, and I let him down to him. I took him down to the first part of the pole. I threw a rope around his arm, and took him down to the telephone wire. We got him down the pole. They were I guess, about, oh, I should say ten feet above the ground. Then after that I had to get the boy to help me.

Q. Now, did you see those marks in his elbows yesterday?

A. Yes, sir.

Q. How do you account for that?

A. Those are rope burns, where I burned him with the rope, getting him down the pole. I just threw a rope around, and let him down by the arms. When we got to the store, I noticed those burns across the arm.

Q. Did you ever command him to come up on that pole and help you?

A. No.

Q. Did you ever ask him to do any part of the work there?

A. No.

Q. Did you hear him testify that he had made some ties up on the line?

A. Yes, sir.

Q. When was that, and under what circumstances, if he did?

A. Well, he helped—he came up there, and I let him finish one end there on one wire.

Q. Showed him how it was done?

A. Yes, sir. But I worked every pole.

Q. You say you finished all this work without any help at all?

A. Yes, sir.

Q. Well now, is it too much for one man if he is lifting that wire from this peg, is it a hard strain, or too much for one man to lift it over here?

A. I should judge on a straight line, it would be about forty or fifty pounds lift.

Q. You never had any difficulty in handling the work, did you, Mr. Harbert?

A. No, sir. I have lifted wire on the length of ten poles, the length of ten poles going down a gulch, because the top pole would be on the opposite side of the gulch.

Q. After he was hurt, and while you were there in the store, or when you were there in the automobile,—when you were in the store, do you remember

Mr. Buxton coming in?

A. Yes, sir.

Q. Did you hear any talk between Mr. Buxton and Johnnie at the time?

A. Yes, sir, I heard them talking. Mr. Buxton was very badly excited, walking up and down the store there.

Q. Do you know whether he was the first man that was ever hurt up there or not?

A. Why I don't know myself, no. I never heard of any one else.

Q. You say Mr. Buxton was walking up and down the store, was he?

A. Yes, sir.

Q. And he is the head electrician?

A. Yes, sir.

Q. Did you hear Johnnie talk to him at that time?

A. Yes. Shortly after Johnnie was a little relieved, and Mr. Buxton was very worried, and I think Buck says, "How did it happen," or something. And he was worried. And Johnnie says. "I don't know, Buck, but you don't need to worry. It was all my own fault." Something about those words.

Q. That was the substance of the conversation, was it?

A. Yes. I don't remember the exact words.

Q. Now, did you hear him, did you also hear him talking with Mr. Ladd in the automobile?

A. Yes, we were talking. We talked together on the way down at different times—not very much.

Q. You came down with him in the automobile?

A. I came down with him in the automobile. We talked a little on the way down.

Q. Where did you bring him down on the machine?

A. Down to Mr. Bisher's house.

Q. How far would that be?

A. That is in the neighborhood of 13 miles.

Q. Did you hear him make any statements during that trip as to how it happened?

A. Well, I think the same conversation came up on the way down, as to how it happened, how he come to do it.

Q. What did he say?

A. And he says, "I don't know. I must have got careless, and threw my hand up there."

Q. You don't know yourself how it happened, do you?

A. No, I don't know.

Q. If he had stood there on the pole, and kept off from both wires, it would not have happened at all, would it?

A. Why, I don't see how it could have.

Q. What do you call a boy that runs along the ground and carries those supplies?

A. Usually call him a grunt, or helper, things like that.

Q. Did his duties as helper out there require him to get into any dangerous place at all?

A. No.

Q. Did you ever hear of a helper using rubber gloves?

A. Never did.

Q. Or using this body protector, this sow-belly they speak of?

A. No.

Q. Or being furnished with nippers that are wrapped?

A. No, sir.

Q. Do they furnish the helper—is he exposed in any way to any danger in his duty on the ground just carrying the material?

A. No.

Cross Examination.

Questions by Mr. RICHARDSON:

Mr. Harbert, you are working for Mr. Betts, the Cornucopia Mines Company?

A. Yes, sir.

Q. You were engaged in working for Mr. Betts, were you, on the 28th of last July?

A. I think so.

Q. You have been working for him ever since?

A. Yes, sir.

Q. Now, you are at the present time in the employ of Mr. Betts of the Cornucopia Mines Company?

A. I was just before I left there, yes, sir.

Q. You haven't left there for good, have you?

A. No, sir.

Q. You expect to go to work for him after you get

through with this case?

A. Yes, sir, that is my intentions.

Q. Now, Mr. Harbert, where were you working before you began working there? When did you first begin working for Mr. Betts?

A. July 11th.

Q. Receiver of the Cornucopia Mines Company. When?

A. I went to work up there on July 11th.

A. On July 11th. Where had you been working immediately prior to that time?

A. In Halfway.

Q. At Halfway?

A. Yes, sir.

Q. What were you doing in Halfway?

A. I was working in a general merchandise store.

Q. How long had you been working there?

A. About a year, I guess, something like that.

Q. About a year in the general merchandise store?

A. Yes. I was all around the farm and the store, and in the Halfway National, or in the American State Bank, I worked in there awhile.

Q. And how long had it been since you had worked on an electric line carrying a voltage of 2300 volts?

A. In the neighborhood of—on transmission line, about two and a half years, I guess, three years.

Q. Been about two and a half years since you had worked on a transmission line?

A. Yes, sir, doing work. I have handled 2300 volts outside transmission line.

Q. Now, where did you work on a transmission line that carried 2300 volts?

A. I worked on 2300 volts in Astoria.

Q. In Astoria?

A. Yes, sir.

Q. What transmission line was it, what company?

A. The Astoria Electric Company.

Q. How is that?

A. Astoria Gas & Electric Company.

Q. Now, what lines, what kind of line have they, three phase transmission line?

A. Yes, they have three phase, two phase; 500-6,000.

Q. Now, what is the number of volts that they generate at their power plant?

A. Which power plant?

Q. The power plant that they send the electricity to a sub-station, the transformer?

Q. Which one do you refer to? You see you can generate any voltage from 110 up to 2300, step it up to most any voltage you want.

Q. What I am asking you, Mr. Harbert, is what is the amount of electricity that they carried over their lines to the first transformer?

A. Whereabouts?

Q. In Astoria, Oregon?

A. Well, they have different stations there. That is, they have one station—they have the Hammond Lumber Company at present; but then they have their own steam plant, used slab wood for fuel.

Q. How many power plants did they have?

A. They had one there at that time.

Q. Whereabouts was that located?

A. Down town, in Finn Town, I think.

Q. What part of town?

A. Lower town, right near the river, near the Columbia River.

Q. What river?

A. Columbia.

Q. What part of the town? Which end of the town?

A. Finn Town, I think is what they call it. That is the lower end, that is down the river.

Q. This is owned by the Astoria Gas & Electric Light Plant?

A. Yes, sir.

Q. They have only one generating plant?

A. At that time that is all they had.

Q. I am speaking of that time you were working there?

A. Yes, sir.

Q. Now, how many volts of electricity did they generate and send out over their wires to the first transformer?

A. 2300 volts.

Q. 2300 volts?

A. Yes.

Q. That is as high a voltage as they use in Astoria?

A. At that time, yes, sir.

Q. 2300.

A. At that time, yes.

Q. How far was this sent down in the streets of Astoria?

A. It was sent all over. There was one 6,000 volt line there.

Q. There is one 6,000 volt?

A. Yes, series arc. But that went all over the city.

Q. Was that generated by the same plant?

A. Yes.

Q. Didn't you just say a minute ago that they only generated 2300 volts?

A. I believe they did, but we put this series arc lighting afterwards.

Q. Then their main transmission line that leaves the generating plant carried a voltage of 6600?

A. Yes. You see they have different voltage. That series arc, and then they have the lighting, most all of that, in the multiple is 2300.

Q. Where did you work for the company when you were working for the Astoria Gas & Electric Company?

A. I did different work for them. I worked in the gas.

Q. You did electric work?

A. I did a little of everything there.

Q. You worked in the generating plant?

A. No.

Q. Where did you work?

A. I worked in the office, and done a little line

work.

Q. What did you do in the office?

A. I was bookkeeper.

Q. You were bookkeeper in the office?

A. Yes, sir, I kept books.

Q. You kept books?

A. Yes, sir.

Q. Now, where did you work on the line?

A. I have gone out and shot trouble on the line.

Q. You have gone out and shut trouble?

A. Yes.

Q. Now, what kind of trouble?

A. Oh, different little jobs that come up. I don't remember just what work I did do, but I have different time, I have done different work.

Q. Now, had you ever worked as a lineman before this time?

A. Yes, sir.

Q. Whereabouts?

A. I done line work in some of the first work I done in the east.

Q. Whereabouts?

A. Hoopston, Illinois.

Q. What company?

A. Hoopston Gas & Electric Company.

Q. That was the first line work that you did?

A. Yes, sir. I worked there for 18 months.

Q. In what capacity?

A. I done most anything that come up, read meters, done line work, dug post holes, done office work.

Q. You did some office work?

A. Yes, sir.

Q. And once in awhile they would send you out to fix trouble on the line?

A. Yes, I have gone out and done work. In a small place a man was required to do a little of everything, as you understand.

Q. How long did you work there?

A. I worked there 18 months, that is, in actual work. I worked on and off there when I was going to school in different capacities, but I never done any actual work only those 18 months.

Q. Then where did you go to to go to work?

A. Portland.

Q. You came to Portland?

A. Yes, sir.

Q. Did you go to work here in Portland?

A. Yes, sir.

Q. For the Portland Railway, Light & Power Company?

A. Yes, sir.

Q. Did you work as a lineman for the Portland Railway, Light & Power Company?

A. I worked for the O.-W. R. & N. Company when I first came here. No, I didn't work as a lineman for the Portland Railway, Light & Power Company.

Q. Did you work for the O.-W. R. & N. Company?

A. Yes.

Q. Whereabouts?

A. At the Albina shops, under Mr. Cunningham.

Q. You didn't work for the O.-W. R. & N. Company as a lineman, did you?

A. No, sir.

Q. You didn't work for the Portland Railway, Light & Power Company as lineman, did you?

A. No, sir.

Q. Didn't you say yesterday that you were familiar with the lines of the Portland Railway, Light & Power Company in the City of Portland?

A. I told you I had worked on and off at these different places, I think. I didn't say that I had done line work here in Portland. But I am quite interested in it. I noticed their lines, and different things.

Q. You notice when you walk along the street?

A. Yes, sir.

Q. Have you seen any lines of the Portland Railway, Light & Power Company in the City of Portland that were not insulated, that carried 2300 volts?

A. Right outside of Portland here, from Portland to Cascade Locks, it goes.

Q. I am speaking of lines, Mr. Harbert, that carry 2300 volts in the corporate limits of the City of Portland.

A. I cannot swear that I have, inside the city limits.

Q. Don't you know, as a matter of fact, that there is not a transmission line within the corporate limits of the City of Portland, owned by the Portland Railway, Light & Power Company, or any other company, that is not insulated, and if it was not insulated,

they would be subject to a fine by City Ordinance? Don't you know that?

Mr. SMITH: That City Ordinance business, that is immaterial. An ordinance of the City of Portland would not be law in this case. There is no ordinance requiring them to insulate out in the mountains.

COURT: I don't think there is any use pursuing that inquiry, because you are inquiring about lines within the City of Portland, and this accident occurred outside of any city, on a transmission line running across country, and there is no parallel between the two. I do not understand why you pursue an inquiry on that line.

Mr. RICHARDSON: I understood him to testify yesterday that the transmission lines in the City of Portland carried 2300 volts, were not insulated. That is the reason why I was asking this question.

COURT: He has already said he has not seen those lines of the City of Portland uninsulated.

A. I beg your pardon. I don't believe I said transmission lines were not insulated here, because I really don't know. I said outside the city, transmission lines across country, anything like that, are uninsulated.

COURT: I understood you to say that you have seen no lines inside of the city that were not insulated.

A. Well, outside I saw that were uninsulated the transmission lines.

COURT: I understand that outside they are not insulated. Inside they are insulated.

A. Yes, that is correct.

COURT: That is what I understood you to say.

A. Yes.

COURT: I think that is enough.

Q. What lines running into the city, and outside of the city, do you know, of 2300 volts, that are not insulated? Just name the line to the jury.

A. There is one line running from here to Cascade Locks.

Q. Cascade Locks?

A. Yes, sir. Clear up the line out of Portland. It is run on the right of way of the railroad, and it has the telephone wires running along on the same poles.

Q. It runs from Cascade Locks to where?

A. It runs all along to all the farmers and the different people. Now, I inquired about that. That is information that is given to me.

Q. Of whom did you inquire?

A. I cannot say the gentleman's name. I asked a gentleman up the line about this line.

Q. When?

A. Coming down here.

Q. Coming down here?

A. Yes, sir.

Q. You asked him. How do you know he knew?

A. I don't know.

Q. What did he tell you?

A. He told me it had 6600 volts running on there.

Q. Carried 6600 volts?

A. Yes, sir.

COURT: I don't see any use following up that in-

quiry. I suppose that that line was uninsulated.

Mr. RICHARDSON: At 6600. I thought he said 2300.

A. That is 6600.

Q. Do you know of a 2300 volt line now, that leads into the City of Portland that is uninsulated?

A. No, I don't, 2300 volts. I don't think there is but very few coming in here at that voltage.

Q. Now, Mr. Harbert, when you began working for Mr. Betts, did you tell him that you were an experienced lineman?

A. I hired out to do the work. He never asked whether I was.

Q. What work did you hire out to do?

A. I hired out to do line work.

Q. How much line work did he have for you to do?

A. To change that line there, and he told me after he got that changed he had some houses he wanted wired. After I finished up my wiring that he would give me a shift in the plant. That was Mr. Buxton and I talked it over. I never talked with Mr. Betts about it at all. That is the way I went to work up there.

Q. I believe you stated it was very easy for you to work on this line without injuring yourself from shock, yesterday?

A. I did.

Q. Now, how long would it take you to tie a tire wire up there?

A. I cannot say how long. I should imagine—

Q. Where you had plenty of room to work in, it would not take you very long, would it?

A. No. I should imagine it would take a couple of minutes,—five minutes to each one. That is, just the tying. There is wire to take off, insulating changes, and change pins, and different work like that; may have to take the cross arm off, and put a new one on.

Q. You might have to take the cross arm off?

A. Yes.

Q. And you did that?

A. Yes, sir.

Q. You took some cross arms off?

A. I took that one off the 6600 volt line, and put a new one on.

Q. I mean, at the time you were changing these insulators, did you take any cross arms off?

A. Yes, I took two off, I think, on the job.

Q. You found them in a defective condition, and took them off and changed them?

A. Not necessarily. They didn't suit me. They were split a little, so the pin didn't set in right, so I put in new cross arms.

Q. How long would it take for you to change a wire, change an insulator, untie it and put on a new one?

A. Well, I should judge about five minutes.

Q. About five minutes?

A. In that neighborhood. Not any longer than that. That is giving plenty of time.

Q. Now, was it a little tiresome to climb a pole and do this work?

A. It was the first few days I went on the job. I hadn't been doing that work for some time. I hadn't followed that line steady.

Q. What did you do when Johnnie would be up the pole making a tie?

A. How is that question?

Q. I say, what would you be doing when Johnnie would be making a tie on the pole himself?

A. I don't know what I would be doing, because he never did.

Q. How is that?

A. He never did it, so I don't know what I would be doing.

Q. He never did it?

A. No, not alone.

Q. Then you didn't take it time about, as he said yesterday?

A. No.

Q. He was mistaken about that yesterday, wasn't he?

A. Yes, he must have been mistaken, because this was the eighth pole that he got hurt on, the eighth pole we done any work on.

Q. How is that?

A. That was the eighth pole from where I started.

Q. Now, you say Johnnie was to work on the ground, I believe, just to carry insulators. Is that all?

A. I don't know. Mr. Buxton hired him. That

is my understanding.

Q. You didn't tell him to do anything?

A. No. That was not my duty to tell him.

Q. I beg your pardon?

A. It was not my duty to tell him what to do, or what not to do.

Q. You didn't say anything to him?

A. Oh, I don't know that I didn't say anything to him. I couldn't swear to that. I don't remember saying anything.

Q. You don't know what Mr. Buxton said to him?

A. No, I don't.

Q. Well, what was he out there for?

A. At work.

Q. Along the line? You said he was along the line, wasn't he?

A. Well, he was to carry insulators, cut tie wires, do things like that; send them up to me when I wanted them. That was my understanding.

Q. You knew he was to help you, didn't you?

A. How is that?

Q. You knew he was instructed to help you, didn't you?

A. Yes.

Q. Now, I believe you stated that you realized that it was a great deal more dangerous for two of you to be on the pole than just for one, didn't you?

A. I think so, yes, sir.

Q. And what did you say to Johnnie when he began to climb that last pole that he climbed.

A. The last pole?

Q. Yes.

A. Right at the time or just a short time before, on that very same pole, I was cautioning him to not let our feet get together, anything like that.

Q. Cautioning him not to let your feet get together?

A. Yes, sir, told him not to touch me at all up there.

Q. Had you said anything—

Mr. SMITH: I submit the witness is entitled to answer the question counsel asked him in his own way.

COURT: Yes, the witness ought to be allowed to answer the question.

Mr. RICHARDSON: I mean for him to answer, but I am trying to hasten the cross examination. What was the question?

Mr. SMITH: The question was, what did he say to Johnnie when he started to climb that pole.

Mr. RICHARDSON: Yes.

Mr. SMITH: Let him answer.

A. When he started to climb the pole? I don't think I said a word to him when he started to climb. I was up there working.

Q. Did you say anything to him when he got up to the top?

A. I think it was on that very pole—I wouldn't swear to it—that I cautioned him about the wires.

Q. Now, he had been up other poles? He had

been climbing other poles before this, hadn't he?

A. I think he was on—

Q. What about the pole before?

A. I should say that he was on three poles before that with me.

Q. On three poles. What did he do on those poles?

A. Well, he brought up insulators, and on one pole he tied the wire on one wire. I showed him how and let him do that.

Q. Now, didn't you say yesterday that you took the insulators all up by a rope?

A. Did I say all of them?

Q. Yes.

A. I don't know whether I said that or not. I think I said that was what I understood his duties to be; that he sent the wires up to me. But I didn't say that he wasn't on a pole, because he was.

Q. Then was there any necessity for him to be on the pole if you had a rope to take up the insulators?

A. No, not necessarily. No necessity.

Q. Not necessarily?

A. No necessity, no.

Q. And what did you say to him when he got up on the pole?

A. I cautioned him about being on this pole, told him he didn't have to come up there. I didn't have any authority to fire him down, or anything like that.

Q. You didn't?

A. No, sir.

Q. You didn't want to hurt his feelings, did you?

A. Well, Johnnie—I liked Johnnie, and would show him everything I could.

Q. Did you show him how to make a tie?

A. I think he watched me, yes.

Q. He didn't make the tie himself?

A. No.

Q. He never took hold of an insulator to change it, or to lift a wire, did he?

A. Why, I cannot say whether he did or not. I don't remember.

Q. You don't remember?

A. No, not whether he lifted a wire or not. I know in this particular case he didn't.

Q. But you cannot testify as to what he did on the other poles before you reached this last pole, on which the accident happened?

A. Well, he watched me there, and on one pole, as I told you, he tied over on one side there on one of the wires.

Q. Now, did you tell him that he was not expected to climb any poles?

A. Yes, sir.

Q. You told him that, didn't you?

A. I told him there was no use in it; he was not paid for that.

Q. Well then, tell me, Mr. Harbert, why he had pliers and a belt and climbers with him. Explain to the jury why he happened to have these with him all the time?

A. Well, here is why he had those—anything that could happen to me, or anything that he might be able to help me off, or something like that. Not that I was afraid of anything, but it was just the idea of having a man along that knew how.

Q. So he was wearing this belt and these climbers for the purpose to aid you in case you had an accident?

A. Yes, sir.

Q. That was the object?

A. Yes, sir.

Q. Why did he send home for a different pair of pliers?

A. I don't know.

Q. You don't know that?

A. I don't know why. I think I heard afterwards that he did, because I know I sent his stuff home afterwards—his pliers. They were a different kind. I remember when he had them too.

Q. You knew he sent home for his own climbers, didn't you?

A. I knew he had his own climbers.

Q. You didn't know that he sent home for them?

A. I didn't know whether he sent home for them, no.

Q. You didn't have any climbers for him, did you?

A. Why, I had another pair of climbers there, yes. There were two pair of climbers there. Neither one of them belonged to me.

Q. Who was furnishing these belts and climbers

to him?

A. I couldn't say that. I don't know who furnished them.

Q. Who furnished them to you?

A. Well, I don't know whether they were Mr. Buxton's or the company's. They were all there. Mr. Buxton came down—he says, “take what you want.” So I took what tools I wanted.

Q. Then you got the tools yourself, didn't you, Mr. Harbert?

A. How is that?

Q. You got the tools and appliances yourself, didn't you?

A. I got them myself?

Q. Yes. You went after them.

A. Yes. I went down and he gave them to me.

Q. Buxton told you to get them?

A. He gave them to me.

Q. Well, now did you get the climbers out for Johnnie?

A. I cannot say that I did.

Q. Well, do you know who did?

A. No.

Q. Did Buxton?

A. I might have done it. I don't remember that.

Q. You might have done it?

A. Yes. I won't say that I didn't.

Q. You don't remember. You remember, though, distinctly, you remember very well what Johnnie said while he was suffering on the day of the accident?

A. Yes, sir.

Q. You remember that very plainly, don't you?

A. Yes, sir.

Q. Now, you testified, I believe, Mr. Harbert, that you heard Johnnie say to Buxton that it was his, Johnnie's own fault?

A. Yes, sir.

Q. That was while he was there in the store rubbing his arms?

A. Yes, sir.

Q. Do you know what the doctor was giving him at that time?

A. No I do not.

Q. Did you help chase him up and down the road any to keep him awake?

A. I did it alone.

Q. How is that?

A. I done it alone myself.

Q. Why did you run him up and down the road?

A. I took him out on the road to ease his mind.

Q. What was the object in running him up and down the road?

A. He was partly sleepy and tired.

Q. Why?

A. I did not know why.

Q. They didn't tell you why he was sleepy, or why you should walk him up and down the road?

A. I don't know whether they told me or not.

Q. Then, why were you walking him up and down the road?

A. Why, the boy was hurt. He was in pain, and things like that. I took him up and down the road. We walked away down the road, we walked a mile below the town there, before the automobile caught up with us. Around the store there, I wanted to get him out to get him exercised, get his blood working in his system.

A. Then no one said anything to you that you were to walk him to keep him from going to sleep?

A. I think I done it of my own accord.

Q. You did it of your own accord?

A. Yes. I knew he was drowsy, wanted to go to sleep.

Q. Did you figure that his suffering was making him drowsy?

A. No, I didn't figure anything like that. I figured by walking him around, giving him exercise, it would cheer him up a little.

Q. You thought you would cheer him up with those hands in that condition?

A. Well, those hands didn't look quite so bad then. They showed burns, but I never thought for a minute—of course I don't know anything about such things, but I didn't think for a minute that the boy would lose his arms, or anything like that. It showed burns, and that is all. I didnt even give it a thought of such a thing.

Q. Wasn't he suffering a great deal with his hands?

A. Oh, yes, his muscles knotted up. That would

knot up the circulation.

Q. You walked him around so as to take the knots out of his muscles?

A. Well, we rubbed those out, but I walked him around, as I told you, to get his blood circulating, keep him from going to sleep. He wanted to go to sleep. They gave him something,—what it was I don't know. They must have given him something to go to sleep, but I was not in there at the time. If it was anything, it is just hearsay with me. I didn't see what they gave him.

Q. Where did you say, Mr. Harbert, that you got your electrical education as a lineman?

A. As a lineman?

Q. Yes, or as an electrician?

A. I got it as a lineman from experience, is all,—line construction I have studied. I have taken I. C. S., taken two courses of that; went to the University of Oregon, and went to the U. of I. awhile.

Q. You took an electrical course in the University of Oregon?

A. Yes, sir.

Q. How many months?

A. I don't remember just how long I was there. I got sick after I was there awhile, and quit.

Q. You were there two months or three months?

A. I was there longer than that. I didn't get line construction there. I was in mathematics while I was there, is all I got. It was electrical engineering, but I only got the mathematics.

Q. And what did you get when you went to the University of Illinois?

A. Same thing. I got mathematics there.

Q. Electrical?

A. The I. C. S. I have studied a little of everything with that. I am still studying it.

Q. Now, I believe you stated, Mr. Harbert, that it was only a mile and a half from the power plant to the stamp mill?

A. Now, at the present time. No, at that time, there were 89 poles 100 feet apart.

Q. 89 poles 100 feet apart.

A. Yes, sir. So it must be right in that neighborhood. I don't say it is exactly a mile and a half.

Q. Now, you stated, I believe, on your direct examination, at the time this accident happened, Johnnie had his left hand on the wire?

A. He had hold with the left hand.

Q. He had what?

A. He had hold of the wire with his left hand.

Q. Which wire?

A. This wire right here. This insulator was on this side of the cross arm. That insulator was on that. Two insulators tied in. That insulator there was tied in. This wire was laying over here. As I say, I just started to screw that insulator on. Johnnie was leaning back here on his spurs, and was holding onto this wire.

Q. What was he holding onto that wire for?

A. Why, for a rest, I should suppose. That is

what I usually do. I couldn't say that.

Q. Do you usually hold on there to rest? You get tired, you grab hold of the wire to hold yourself up?

A. I cannot say I do. But I often put my arm over anything like that. I have done that. And when he had hold of this wire, he must have flung his hand up. I didn't see him throw it up, but I must have seen it the second he got it up. That hand was laying, or looked like to me, the wire was right across there like that—he just hit that wire.

Q. Now, Mr. Harbert, did you see that burn right in through there in his right hand a little larger than a wire?

A. I seen a burn on the right hand across the wrist, up this way.

Q. You didn't see the burn then that the doctor described to the jury yesterday?

A. No, I didn't see the burn in the palm of the hand. I seen the burn down here.

Q. Did you examine it?

A. Well, I seen what I supposed was all the burns that were on the hand.

Q. So the doctor must have been mistaken in his description of the burn?

A. Well, I wouldn't swear that there was no burn there. I don't know that there was no burn there.

Q. Now, did you say anything to him while he had his arm or hand, left hand, up on that wire?

A. It happened so quick, it was all over in a sec-

ond.

Q. How was he holding that wire with his left hand?

A. This way.

Q. Just had hold of it with his hand?

A. Just had hold of it with his hand.

Q. Just gripped with his hand, left hand?

A. Yes, left hand.

Q. That is the part of his hand he has left now? You know his right hand is off entirely?

A. Yes.

Q. And he held hold of that?

A. Yes, sir.

Q. And he was in that position when the accident happened?

A. He was.

Redirect Examination.

Q. I believe you stated that you accounted for the fact that his left hand was not burned from the fact he had a tight grip on the wire?

A. That is the way I account for it.

Q. Now, it is said that 2300 volts will kill, isn't it?

A. How is that?

Q. What is the least voltage you know, that will kill?

A. Why, if the contact is large enough, 110 volts will kill.

Q. It depends, doesn't it, about how close to the heart the shock comes?

A. Yes, that has lots to do with it—how big a con-

tact it is between a person's foot and the arm, is usually sure death, because it goes through the heart.

Q. Mr. Harbert, I will show you three pictures marked "C", "D" and "E". I first will show you a picture marked "Defendant's Exhibit C". Will you please state what that is a picture of, Mr. Harbert?

A. That is a picture of the transmission line at Cornucopia.

Q. Showing—

A. Showing 6600 volts on there.

Q. Does it show the telephone line also?

A. Shows the telephone line below.

Q. Who took this picture, do you know?

A. I think Mr. Buxton took that picture.

Q. You know it is a picture of the situation, do you?

A. Yes, sir.

Mr. SMITH: We will offer it in evidence, if the Court please.

COURT: Any objection?

Mr. RICHARDSON: No objection.

COURT: Very well.

Mr. SMITH: Then I will just offer the three of them.

Q. I will ask you to state what this picture marked "Defendant's Exhibit D" is?

A. That is the pole that he got hurt on.

Q. Part of the same line?

A. Same line.

Q. You state this runs through a mountainous

country?

A. Yes, sir.

Q. Now, Defendant's Exhibit E, which one is that?

A. Well, that is myself up on the 6600 volt line. That is before I took that cross arm off.

Q. On the same pole?

A. Same pole.

Q. Are you working on the same side of that picture that you were?

A. Same side. Similar position.

Mr. SMITH: These three pictures, then, marked "C", "D" and "E", we will ask to introduce all three of them.

Mr. RICHARDSON: No objection.

Marked "Defendant's Exhibits C, D and E."

Mr. SMITH: Now, gentlemen, we had one of those enlarged. This is an enlargement of one of the exhibits. I think it is "E". Will you kindly tell me which one is the picture of the man on the pole? "E", isn't it. The one marked at the bottom "E".

JUROR: E.

Mr. SMITH: If you have no objection, I will offer this.

Mr. RICHARDSON: No objection.

Mr. SMITH: Then we will offer in evidence as "Defendant's Exhibit F", the enlarged picture.

Marked "Defendant's Exhibit F".

Recross Examination.

Q. Is this picture made of the pole on which the

boy was injured?

A. Yes, sir.

Q. Now, one other question, Mr. Harbert?

A. Yes, sir.

Q. You stated there were telephone wires on this pole?

A. I did.

Q. Now, how far were those telephone wires from the cross arm bearing and supporting the electric wires?

A. From the wire they are seven feet.

COURT: Seven feet below?

A. Yes.

Q. You are positive about that?

A. I measured it.

COURT: Seven feet below?

A. Seven feet below the wire.

Q. Below the cross-arm or the wire?

A. Below the wire.

Q. Seven feet below the wire?

A. Yes, sir.

Q. You measured that?

A. I measured that.

(Witness excused.)

F. E. MYERS, a witness called on behalf of the defendant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. SMITH:

Now, Mr. Myers, I will ask you kindly to sit facing

the jury a little. They cannot hear very well when you talk away from them. And speak distinctly. What is your name, please?

A. F. E. Myers.

Q. Where do you reside?

A. Portland.

Q. What is your age, please?

A. 38.

Q. And your occupation?

A. Electrical engineer.

Q. How long have you been following that business?

A. About 23 years.

Q. Where have you followed it?

A. Portland and Oregon.

Q. Where else?

A. Just the one state.

Q. Your experience has been confined here, or extending out over the state, which?

A. It has been extended out over the state for the last six years.

Q. Are you a graduated electrician from any school?

A. No, I am not.

Q. Just working and studying?

A. Practical work.

Q. Now, in the business that you are in, have you ever done any line work as they call it?

A. Yes, I have done line work.

Q. Where?

A. I helped to construct the line at Cascade Locks, a small 2300 volt line—winter work—and various places where I have been at, I couldn't think of just now, where we did lots of repair work on lines. I have climbed the poles, putting on insulators, such as that.

Q. You have put on insulators and changed insulators, have you?

A. Oh, yes.

Q. Did you ever work where the lines were bare, carrying 2300 volts?

A. Yes, sir, I have put on some insulators between Chehalis and Centralia. They had 2300 volts on their line there before they changed it.

Q. Did they use their wires bare, transmission wires?

A. They did at that time.

Q. Do you know what weather insulation is?

A. I do.

Q. Will you state to the jury what it is for and what it is?

A. Well, it is to afford a certain protection, usually, against swinging short, or anything like that; but an electrical man doesn't consider it a safe protection for life or limb, as I don't think there is any manufacturer of weather proof wire will guarantee the wire up to any standard voltage.

Q. You say there is no one that will do it?

A. No, I don't think any of them will do it. In fact, they have no test tag on those wires.

Q. You say the men do not consider it is safe, that is, weather insulated?

A. Not practical linemen, no.

Q. What about the comparison as to which they think is better to work with, bare wire or wire that has got this stuff on it?

A. Well, I couldn't say about usual linemen, but myself I prefer to work with the bare wire.

Q. Why?

A. Because I am not deceived on insulation.

Q. How will the weather insulation deceive a lineman?

A. It is in various ways. Some times the deterioration of the insulation qualities of the insulation, and then there may be punctures in it, especially where you have it tied in around the pin.

Q. Now, is it practicable for any company to keep their outside transmission cross country high voltage wires, say 2300—that seems to be the magic number in this case,—2300 volts, or 6600 volts, or 1,000 volts, is it practicable for them to keep those transmission wires insulated with weather insulation so that it will protect against shock?

A. Well no, after it has been up six months or a year, after the elements has worked on the line.

Q. It would break up any company to try to keep that stuff new, wouldn't it?

A. Yes, to keep it new, it would.

Q. How long is the standard cross-arm?

A. Generally call it a four pin cross-arm, twelve

inches between arms.

Q. I will show you this cross-arm that we call mutual Exhibit B-1, and ask you from your observation of that—we agree it is four feet?

Mr. RICHARDSON: Four feet.

Q. Is that what you call a standard cross-arm?

A. It is generally the standard cross-arm, four pin arm.

Q. Suppose there are three wires, can you tell by looking at that whether there have been more than three wires on it?

A. By looking at the cross-arm itself, no, you cannot.

Q. Can you tell by the pins?

A. You can tell by the pins whether the insulators has been on the other pins.

Q. Looking at that physical condition, how many insulators have been used on it?

A. I will have to examine it to see.

Q. All right. Just step down and see.

A. Well, this pin here looks as if it never had an insulator on it.

Q. That would be what you call three wire on that, wouldn't it?

A. Three wire, yes.

Q. Now, you see also where that has been up against the pole, don't you, Mr. Myers? I will ask you to kindly tell the jury whether or not it is a safe place, whether the wires are too close as you see those pins, too close for a lineman to work in safety if he is

putting on new insulators?

A. No, it is not. The lineman can work and transfer his wires across there and keep in a safe place.

Q. Keep practically a thirty inch space to work in, can't he?

A. Yes, sir, all the time.

Q. Do you know what this body protector is that they call a sow-belly?

A. Never used one.

Q. Would there be any way for a lineman to use it on a place like that?

A. I don't see hardly how he could.

Q. You know what they are?

A. Never saw one; never had occasion to use them.

Q. Do you know what they are?

A. It may be what they call a safety belt.

Q. Safety protection to the body. In doing that class of work, you wouldn't use that at all?

A. If sow-belly had reference to safety belt, why, I would use one in case of getting knocked on a pole.

Q. You mean the belt that comes around the body?

A. Yes, sir.

Q. You don't know what this protector is that comes around the front?

A. I never saw one.

Q. How many years have you been in the business?

A. 23 years.

Q. Do you know about a practical lineman out in the woods that way, say, out in the mountains like these pictures show—I will show you these pictures “C”, “D” and “E”—I think it is conceded, however, that this transmission line is in a mountainous country, sparsely populated—working through a country like that, changing insulators on the cross-arms, as you have stated, what use would a man make of rubber gloves?

A. Well, on that pole line, I don’t see what use he could make of rubber gloves there, because he is up on a pole there, and nothing else around him but three wires. I do not see the necessity for using rubber gloves.

Q. Have you worked on this line in question?

A. No, not on this line I have not.

Q. You have worked at Cornucopia, though, have you not?

A. I have been up to Cornucopia and wound a machine for them there.

Q. Do you know the line?

A. I recognize part of that line.

Q. Do you know how it is constructed?

A. Well, I have got a slight idea how it is constructed. I didn’t pay much attention to the line at the time I was there.

Q. Now, you state that you wouldn’t use rubber gloves if you were a lineman up there?

A. No, I would not.

Q. Tell the jury whether it is safer to work on these poles in the heat of the summer than it is in the damp of the winter.

A. Well, it is, yes, because you don't get an induction off them in the dry weather.

Q. This injury, I believe, happened on the 28th of July. Is that the correct date?

Mr. RICHARDSON: 28th of July.

Q. In that climatic condition in that section of Oregon, with the poles in the condition in which they would be in that season—did you ever spend a summer up there?

A. I forget just what month I was up there, but it was in the spring of the year the first time I was up in that country.

Q. You have an idea of the climatic condition, then, have you, semiarid condition?

A. Yes, I believe it would be kind of warm up there around July.

Q. With that condition, with those poles about 25 feet to the cross-arm—is that correct, gentlemen?

Mr. RICHARDSON: Yes.

A. 25 feet approximately—it may be a foot less, but about that—would you see any use to which a lineman would put rubber gloves to work out there, if he was given them, putting on insulators and changing them?

A. No, I don't think he would in that warm weather.

Q. Why wouldn't you want rubber gloves?

A. Perspiring of the hands cannot deceive me on account of a puncture in the cloth.

Q. You try to keep your hands dry?

A. Yes.

Q. Isn't it a fact that if you are damp, your hands and feet or body damp, you are in greater danger from electricity than with your body dry?

A. If it is a little too close to the next wire to you, it will carry over on that.

Q. Did you ever work on a pole where there was an inexperienced man also?

A. No, I never would allow an inexperienced man to work close to me.

Q. Why not, Mr. Myers?

A. Because I would be afraid of them.

Q. Afraid of what?

A. Liable to make a contact on something and me.

Q. What do you mean?

A. Coming in contact with current, or another wire touching me while I was working on the other wire.

Q. Suppose, as an illustration, that the linemen were working, and was adjusting, we will say, this wire, and there was an inexperienced boy up on the pole also, and he should touch one of these other wires, and in the course of work, he would happen to touch the other fellow's foot, what would happen?

A. They would both get a shock.

Q. That is what you call making a contact?

A. Making a contact between the two.

Q. That is where the danger is?

A. That is the dangerous point.

Q. You have seen men who have been shocked by electricity, and know where the shock comes, don't you?

A. I have seen a couple of them.

Q. Suppose a man has a tight grasp of one wire charged with 2300 volts, and should hit the other one, which hand would show the burn?

A. The one that made the least contact.

Q. That one that had tight hold would not show much of a burn?

A. No, it would not show much of a burn in proportion.

Q. You say the one that drew the arc would show the burn?

A. That is where the heat is.

Q. That drawing an arc is just the electricity shooting across the air?

A. Shooting across and pulling the arc across.

Q. From your observation of this cross-arm, and the conditions that would exist in that country up there the 28th of July, would you say it was a safe place for a lineman to work up there on those poles, in that distance?

A. For myself, I wouldn't be afraid to work 10,000 volts on that pole line under those conditions.

Q. Without rubber gloves?

A. Without rubber gloves.

Q. What is the highest voltage you handle without rubber gloves?

A. 10,000.

Q. So you know it can be done and is done right along?

A. Between 10,000 and 11,000. When I worked for the Portland General Electric Company that was our high line coming in.

Q. You call 2300 volts high wire, or not?

A. In my estimation I would call it very safe.

Q. Although 2300 volts will produce instant death?

A. Just as quick as 10,000 or 20,000.

Q. What is the least voltage that will produce death?

A. I couldn't say on that.

Q. What is the least you know of?

A. 500, practically is about the least I know of when you get the right kind of contact right.

Q. It will produce death if contact will come so that the current passes near the heart?

A. Passes near the heart and hangs on long long enough.

Q. Now, you speak of weather insulation. I will show you this piece of insulated wire which is marked "Plaintiff's Exhibit 2" which they claim is weather insulated.

A. It looks like a piece of triple braid weather-proof wire.

Q. Now, I will also show you this wire which I

now have, that we will ask to have introduced. Will you tell what kind of insulation is on that?

A. That is what we call single braid rubber covered wire.

Q. What is the difference between single braid, rubber covered wire, and the triple weather proof?

A. Well, there is quite a bit, in my estimation.

Q. Just take your knife and show the jury the difference, please.

A. On a rubber covered wire on the outer insulation, practically has a jute insulation. You see that that is cotton insulation built up. Underneath that it has a certain thickness of rubber covering the copper. That is what they call rubber covered wires.

Q. What is the rubber there for?

A. Mostly protection against leakage or any dampness going through this outer insulation.

Q. Is there any such rubber protection on the weather insulation?

A. No, there is not; not what we call weather proof wire.

Q. You use this second, this small wire that you have there, that rubber-covered wire, that is used, as I understand it, in wiring houses, is it?

A. Houses, residences and buildings.

Q. What precautions do they take to see that even that rubber-covered wire does not come against the woodwork?

A. Why, they insulate with various insulating materials, such as porcelain—porcelain knobs.

Q. And isn't it a fact that if they leave off those porcelain knobs or porcelain tubes through which it lets through the juice, that frequently fire occurs?

A. Frequently, yes.

Q. Will waether insulation protect against the electricity leaking through, or shocking or burning in wood, if it was in contact?

A. Well, it all depends on whether it was in a wet place or a perfectly dry place. More danger in a damp place than it is in a perfectly dry place.

Q. What is the voltage of the little wire that you have in your hand?

A. That small rubber-covered wire is tested and guaranteed to withstand 600 volts.

Q. You say there is no manufacturer that will test or guarantee their weather insulation?

A. Weather proof wire, no.

Q. Now, you have seen a number of cross country wires, haven't you, Mr. Myers?

A. I have, yes.

Q. Carrying 2300 volts or more. Do you know whether they are frequently left without any covering at all—just the bare wire?

A. Well, there are a few—now, there is some lines up in the Washington and Oregon corporation's line, running between Chehalis and Centralia, was 2300 volt line, bare line. But at the present date, they have stepped it up to 22,000 volts.

Q. Do they insulate that?

A. No, that is bare.

Q. That is more dangerous, too, than 2300 isn't it?

A. Yes. Well, the reason why they use bare wire on high tension is the simple reason that there is no insulation that will withstand.

Q. What do you mean by stepping up?

A. That is raising your electric motor force from 2300 to 6600 volts, or 23,000, or whatever you want to raise it to, by transformers.

Q. You do that by passing the current through one machine?

A. Passing it through certain static transformer, we call it.

Q. That transformer converts it, or packs it up, or packs it down, so that there is about three times as much as there would otherwise be?

A. Whatever the ratio is in the transformer.

Q. On the other hand, they can diffuse it, can't they, and step it down?

A. Yes, either step it up or step it down.

Q. What do they do when they take it into a house?

A. They step it down practically to 110 or 220 volts.

Cross-Examination.

Questions by Mr. RICHARDSON:

Mr. Myers, when did you do some work for the Cornucopia Mines Company?

A. I believe it is about four years ago this spring.

Q. You are acquainted with Mr. Betts, aren't you?

A. Well, just about that time I got acquainted with him.

Q. What kind of work were you doing up there?

A. I rewound a 2200 volt induction motor for him.

Q. You are an electrical worker?

A. Electrical worker.

Q. An electrician, instead of a lineman. You are not known as a lineman. That is not the class of work that you are supposed to do, is it?

A. I don't hire out as a lineman, but I profess I can do line work.

Q. Do you belong to that class of electrical workers? That is, if you were going to join some union, or something of that kind, you would not be known as a lineman, but as an electrical worker?

A. Well, if I professed to be a lineman, I would join the linemen. I could take either branch I wished to.

Q. Now, you have worked in Portland, did you say, for the Portland Railway?

A. I worked 11 years for the Portland General Electric Company.

Q. In what capacity have you been working for the Portland General Electric Company?

A. I worked up from about the lowest till I had charge of their stations here in the City of Portland.

Q. Now, did you work as a lineman?

A. For a year and a half, I shot trouble on their

pole lines through the center parts of town here.

Q. Now, they have 2300 transmission lines here, with 2300 volts, haven't they, all over the city?

A. Oh, yes, they have all on the east side, and out of the fire districts on the west side.

Q. Those are insulated too, aren't they?

A. They are now, because the City Ordinance compels them to be.

Q. What is the object of this insulation, Mr. Myers, this weather insulation, what is the object of that?

A. The object of that is to give protection as far as they can in damp weather, such as that, as the telephone line pulling down and laying on it, something like that, and flash together, in various ways.

Q. Now, in dry weather, if the insulation is in perfect condition and not in bad repair, then it is insulation perfect against shock, is it not?

A. Well, I couldn't say it is, because I wouldn't want to try to prove it.

Q. They use that for the purpose of guarding the public in case a line falls on the street or should strike another line? That is one object of the insulating, isn't it?

A. Yes, sir.

Q. It is more expensive, isn't it, Mr. Myers?

A. It is a little more expensive. That is one of the objects.

Q. And you consider it safer, do you not, if it is insulated?

A. No, I do not.

Q. Well, why do they insulate, go to that expense of insulating it then? What is the object of insulating, going to that expense? How much greater is the expense?

A. How much greater?

Q. Yes.

A. Well, it depends on how much that insulation weighs to the copper. They sell it by the pound.

Q. Well, from your experience as an electrician, don't you know how much more expensive the insulated wire is over the naked uninsulated wire?

A. Well it is so much a pound, whatever that is. I have got to see what the last basis of copper is, their last card on it.

Q. Well, approximately?

A. Approximately it is the same price per pound, but there is a loss on the copper in this insulation, because you are paying for insulation, here, when you but the copper on the bare wire.

Q. Would insulated wires cost twice as much as uninsulated wires?

A. It doesn't cost a cent more?

Q. It doesn't cost a cent more?

A. No, it goes in per pound.

Q. Well, but that insulation weighs, doesn't it?

A. Yes, it weighs, but not quite as much as copper.

Q. But for the same size copper wire, then, you would have to pay the same price for insulation as you pay for copper, wouldn't you?

A. Yes.

Q. So, an insulated wire would be more expensive than uninsulated wire of the same size, wouldn't it?

A. Why, sure it would.

Q. Approximately how much? About twice as much?

A. I couldn't say off-hand, unless I see how much this insulation weighed per mile for the copper per mile.

Q. Well, you know that transmission lines carrying 2300 volts in the City of Portland are insulated, don't you?

A. Yes, because there is a city ordinance to that effect, to insulate them.

Q. What is your business now?

A. I am manager of the H. M. H. Electric Company.

Q. In the City of Portland?

A. In the City of Portland.

Q. You are engaged in selling electrical goods, aren't you?

A. Selling, repairing, building lines—anything pertaining to the electrical industry.

Q. You have transacted business with Mr. Betts, haven't you? You sold him supplies?

A. No, I haven't sold him.

Q. And done some work for him?

A. That is four years, I did.

Q. You haven't done any since?

A. I haven't done any since, nor I haven't seen

Mr. Betts until he came down to Portland this time.

Q. How long has it been since you have done any work as a lineman, in the capacity as a lineman?

A. Oh, it is probably six years.

Q. Six years?

A. Six to seven years.

Q. There has been considerable changes in transmission lines since then, hasn't there?

A. Well, they have in a way, as to the higher voltage, but the general construction is practically the same.

Q. Do you know of any lines being constructed now anywhere in the State of Oregon, that is not insulated, carrying a voltage of 2300 volts?

A. Not that I know of right at present.

Q. Now, is it customary, Mr. Myers, for electric linemen to use rubber gloves?

A. Well, some does and some don't.

Q. What about the requirements of the company that you worked for as to their linemen—the Portland Railway, Light and Power Company? You worked for them, did you?

A. I worked for the Portland General Electric Company, which is now the Portland Railway, Light & Power Company.

Q. How long did you work for the Portland General Electric Company?

A. I left them in September, 1905.

Q. Practically eight years ago. You haven't worked for them since then?

A. Not since then.

Q. And you haven't worked as a lineman since then?

A. Not as a lineman; but I have went out and did repair jobs on the line through the country. My business calls me to do almost any kind of work that I go out to do.

Q. Are you familiar with the tools and appliances of the present day linemen?

A. With the exception of that one thing which you call a sow-belly.

Q. You never saw one of those?

A. I would like to see one. I would like to see what they use it for.

Q. You didn't know that the Portland Railway, Light & Power Company furnished those to the linemen, did you?

A. They may at the present date. They did not in my time.

Q. That is seven or eight years ago? And they didn't furnish gloves in your time?

A. No, they didn't furnish no gloves in those times.

Q. And didn't require the employes to use gloves at this time?

A. They left that to the discretion of the lineman. If he wished to use gloves, why he did.

Q. Is there a practical experienced lineman without rubber gloves now?

A. Why, I don't see any of them wearing them.

Q. Do you know of any one in the City of Portland that is known as a practical lineman, and works at that business, that does not have gloves and use them?

A. Yes.

Q. Give me his name?

A. William Castleman.

Q. Where does he work?

A. He works for the Portland Railway, Light & Power Company.

Q. Castle?

A. Castleman.

Q. And he works as a lineman?

A. For the Portland Railway, Light & Power Company.

Q. What kind of work?

A. He does any kind of work on the lines, handling from 2300 volts up for them.

Q. And he doesn't use rubber gloves?

A. I have never seen him use rubber gloves yet.

Q. Did he tell you that he didn't use them?

A. I can see him with my own eyes when I see him working.

Q. Where did you see him working?

A. The last place was out in Alameda country, out there, he did a little line work out there, connecting up a motor on 2300 volts.

Q. Was he working on an uninsulated wire?

A. Practically. Wherever he takes his knife and cuts the wire, it is uninsulated at that time.

Q. But that is weather insulation like the one you hold in your hand.

A. I won't say it was like this. It may have been double weather proof.

Q. You never saw him working without gloves on naked wire, did you, uninsulated wire?

A. Only on occasions when he would make a connection, that is, practically.

Q. Well, I mean on an uninsulated copper transmission wire.

A. It would be impossible for him in the City of Portland, to do it.

Q. I say did you ever see him working on an uninsulated transmission line carrying as high as 2300 volts?

A. No.

Q. Are you familiar—I believe you stated you never saw one of those lineman protectors. They didn't use them in your days.

(Witness excused.)

FRANK A. HULL, a witness called on behalf of the defendant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. SMITH:

Will you kindly state your name?

A. Frank Hull.

Q. Where do you live?

A. Portland.

Q. What is your occupation?

A. I am an electrician, I guess you would call it.

Q. What is your age, please?

A. 28 years.

Q. Where are you working at present?

A. Working for Morgan, Fliedner & Boyce at present on conduit work.

Q. Have you ever done electric line work?

A. Yes, sir, I have done a great deal of it.

Q. How many years did you do that work?

A. About nine years.

Q. Where please?

A. Well, at Kelso, Washington, Chehalis, Centralia, Spokane, and Chicagof, Alaska.

Q. You have constructed plants?

A. Yes, sir.

Q. And you also do general electric work, do you?

A. Yes, sir.

Q. Do you know how to handle these transformers?

A. I do that work, yes, sir, handling transformers.

Q. Now, in constructing these lines, you became acquainted, did you not, with the general character of what they call a standard cross-arm?

A. Yes, what we call a standard cross-arm, I have, yes.

Q. The cross-arm that I refer to is this one over here, Mutual Exhibit B-1, conceded to be four feet in length. Is that the customary length of the standard cross-arm?

A. Yes, for that kind of line, I think it would be.

Q. And you have examined that? You can see from where you are, whether the pegs are set about customarily? Is that right?

A. About 12 inches, yes.

Q. Now, I will show you some pictures, Mr. Hull. They are marked down at the bottom in lead pencil, C, D and E, conceded to be pictures of this transmission line. Have you ever worked on transmission lines out in the country like that shows this to be?

A. Exactly the same kind.

Q. Where?

A. Chehalis, Kelso.

Q. How high a voltage was carried over the wires at those places where you worked?

A. We carried regular 2300 there. That is, that type of line carried 2300.

Q. That is what you call a three phase line, is it?

A. I presume that is three phase, three wire, yes, sir. We had three phase there.

Q. Have you noticed whether these cross country high voltage wires—we will speak of 2300 volts as high voltage—whether those cross country high voltage wires, have you noticed whether they are insulated or not?

A. Some of them are insulated, and some of them are not.

Q. As a practical lineman, and an electrical worker, which do you consider safer to have them insulated or uninsulated, safer for the workmen?

A. Well, I consider very little difference.

Q. Now, you know what weather insulation is, don't you?

A. Yes.

Q. Isn't it a fact that if you have one of these cross country, high voltage wires and you have to tie the wire into these insulators on the pegs, that you have to cut the insulation for the wire to make the tie?

A. Well, you don't have to cut it off, but in making the tie you surely destroy the worth of the insulation anyway—tie it tight enough to stay.

Q. That would expose the workman right there then, anyway, wouldn't it, the very nature of the work he is doing?

A. Oh, yes, he is exposed all the time.

Q. Make the wire just the same as if it was not insulated, wouldn't it?

A. Yes, just the same.

Q. Have you ever worked with bare wires on these transmission lines?

A. Yes, sir.

Q. What is the highest voltage which you have handled on bare wires?

A. The highest voltage that I have ever handled has been 2800—2500.

Q. You used rubber gloves, did you?

A. No.

Q. You handled that amount with your bare hands?

A. Yes. I have used rubber gloves, of course, but that was under certain conditions.

Q. What were the conditions?

A. While we would be working on a junction pole, or if it was raining real hard and everything was wet, we had to go into it at night, I would take gloves when I couldn't see, on shooting trouble.

Q. You have worked in Spokane?

A. A little; not very much.

Q. Did you ever work out in Central Oregon, that dry country, or out through Lewiston, Idaho?

A. No, I worked on telephone work out there. I worked on the Nez Perce plant, from Lowell up to Nez Perce.

Q. That is up where they have plenty of rain?

A. No, they haven't much rain there in the summer time.

Q. They don't irrigate?

A. No.

Q. It is not in the semi-arid belt?

A. Yes.

Q. When you get down to Lewiston, you have to irrigate, don't you?

A. I didn't work at Lewiston.

Q. Did you ever work in eastern Oregon, in the semi-arid country?

A. No.

Q. Isn't it a fact that a dry country is safer for electric workers than a wet one?

A. Oh, yes, of course it is a great deal safer, where

everything is dry.

Q. Along about the latter part of July, in a dry country like there is in eastern Oregon, would be one of the safest times of the year to work on a line?

A. I would consider it so. That is, it would be safe.

Q. Well, now, suppose in that part of the year, the 28th of July, the latter part of July, in that semi-arid country there, that a lineman was required to go out and change the insulators, they were getting ready to step up the current from 2300 to 6600, would it be reasonably safe for him to work without rubber gloves on the work?

A. Why, I would consider it would be just as safe as any way. I wouldn't wear the gloves to do it.

Q. Why?

A. Because they are a bother, that much more weight on you, when it came to taking off the insulators and putting them on, it makes that much more junk.

Q. It makes your hands sweat?

A. Of course your hands would be sweaty in rubber gloves, certainly.

Q. Suppose you puncture them, a little splinter goes through them?

A. That spoils the efficiency of the glove.

Q. It opens you up to danger, doesn't it?

A. Yes.

Q. Now, with this standard arm, Mr. Hull, these pegs, the outer pegs, are twelve inch centers. The

one across the middle I didn't measure, but the two outer ones are twelve inch centers, with three wires on there, with thirty inches from peg, skipping from one peg over to the other one, would you consider that too close, or plenty of space, or what would you, to work?

A. I would consider it a very safe line. I have worked in lots tighter places than that would be, especially from what your pictures show, with only one cross-arm, a very safe line. In other words, I would consider it a snap as a lineman, to work on that kind of a line.

Q. Then you don't think the wires would be too close there for the safety of the workman, do you?

A. No, but if he knew what he was doing.

Q. From your experience as a lineman, Mr. Hull, will you tell the jury whether you would want an inexperienced boy to be on the pole with you?

A. Well, no, I wouldn't want one to be there.

Q. Why not?

A. Well, it isn't very safe to have some one up there that is inexperienced working with those wires. I know of two or three accidents that have been caused by men that were inexperienced, working on poles with other men. And again that is the way the young fellows, or grunts, as we call them, usually learn. We usually let them come up the pole once in awhile, but it is not the safest way to do.

Q. You say you allow them to come up once in awhile, but it is not as safe?

A. No, it is not as safe. This man that was burned at Hillsboro about three months ago, that was caused by an inexperienced workman.

Q. Explain in your own way, how an inexperienced man can cause trouble on a pole for an experienced man.

A. I don't know just what kind of trouble you would want to cause. Would you want to bring him in contact with the line?

Y. Yes, suppose a man is working on this line out here, and the regular lineman is on this side of the pole, and he has lifted the wire over this peg over here, and is working in this thirty inch space, and is working at putting on the insulator here, now suppose there is an inexperienced boy on this side, that has his hand up over the wire over here, how is he liable to cause trouble?

A. Well, if the wire was loose, he could easily knock it around, grab it or something, throw a contact on there. He could, if he had hold of the line, and had contact, if he touched the other man he would give him contact providing he was touching also, if it was dry. If it was wet he would get it anyhow.

Q. With one man touching one wire and another man touching another, independent wire, would there be danger also through their feet touching or their knees?

A. Certainly.

Q. In that case, both of them would get shocked, would they?

A. Yes, in that case, both of them would get shocked.

Q. Now, you have worked enough around lines to know what the boy is kept for, the ground man, the grunt, as you call him. Is there any duty that he is performing that requires him to get up on that pole?

A. No, there is no duty. If he is a grunt, he has no business up the pole.

Q. Do they furnish grunts with rubber gloves?

A. No.

Q. Or these body protectors, these sow-bellies?

A. No.

Q. Or do they furnish them with pliers with wrapped handles?

A. Well, they usually have pliers, because they cut the tie wires for you, and cut off the ends of lines, and such stuff as that. They have always a pair of pliers.

Q. How do they get materials up from the ground?

A. Pulling it up with a hand line.

Q. A man that is equipped carries a hand line with him in his belt, does he not?

A. Yes, sir.

Q. The man simply ties the sack on the end of that, and pulls it up.

A. Whatever he wants he ties it on and pulls it up.

Q. You have seen in your experience the effect of electric burns, haven't you?

A. Yes, two or three.

Q. Suppose that a man were working on this pole—you see the picture of it—the regular lineman over here, and the young fellow on this side, suppose the young fellow was standing down the pole so that his chin was just about even there, can you think of any duty he could perform, or aid in performing with the other fellow changing those insulators?

A. Why, I don't know as he would be of any material help to a man there at all.

Q. Suppose that he were in that position, and had his hand up ahold of this wire, and that through some way he must have come in contact with another wire, which hand would show the heavier burn, if he had hold of the wire, 2300 volts, with his left hand, and happened to hit another one with his right hand or arm?

A. The burn would show up where the arc would be, he more than likely would get a shock, and the contact would be where the arc would, of course, be where it was loose, where the contact was being broken.

Q. The hand that was closed over the wire then, wouldn't show the burn?

A. Naturally wouldn't be burned so bad.

Q. And the one that would be burned?

A. Would be where the arc hit it.

Q. You mean the arc, the lightning flash or stroke of jumping electricity?

A. Yes. Oftentimes happens when you let go—if you let go there, the arc would follow.

Q. In that connection have you ever noticed, or what is the fact, if you can take, say, 110 volt wire that is bare, and take another wire and draw it off, and just when it leaves it will spark?

A. Yes. It is what we call pulling out the arc—pulling an arc out with it.

Q. Will you tell us, Mr. Hull, where there are some transmission lines that you know of, carrying a voltage of 2300 where they use the bare wires across country?

A. There is one at Kelso. There was one on the Kalama River that carried 6600. That was all bare wire. I believe it is yet. I know that it is—that is all bare wire. It carried 6600. There is one in Chehalis, between Chehalis and Centralia.

Q. You constructed a line in Alaska, I believe?

A. Yes, I constructed a plant in Alaska.

Q. For a mine?

A. Yes, for a mining company.

Cross-Examination.

Questions by Mr. RICHARDSON:

Where do you live, Mr. Hull?

A. I live in Portland.

Q. Whereabouts in Portland?

A. 602 Stanton Street.

Q. How long have you lived in Portland?

A. I have been here this last time about six weeks, is all I guess I have been here.

Q. Where did you work before coming here?

A. Worked for the Washington and Oregon corporation.

Q. Whereabouts?

A. Building a line between Chehalis and Castle Rock, Washington.

Q. What kind of a line?

A. High tension line.

Q. What was the voltage there?

A. That voltage will be 22,000.

Q. That was for furnishing motor power to run cars?

A. It is for lighting and power service.

Q. Power and lighting? You didn't have any 2300 volt lines at that point?

A. On that line?

Q. Yes.

A. No. Well, there was 2300 temporarily cut in. I didn't work on it though.

Q. In what capacity did you work up there?

A. Well, I was the foreman of the raising of the poles for about twenty miles of the line. I never worked on the line.

Q. What company did you work as a lineman for the last time?

A. The last time?

Q. Yes, as an electric line man?

A. I worked for the Chicagof Gold Mining Company.

Q. In Alaska?

A. Yes. No, I worked as a lineman for the Wash-

ington and Oregon in Chehalis off and on. I helped them out temporarily when they would be in a pinch.

Q. Was that a transmission line of 2300 volts?

A. Yes, 2300 volt line.

Q. Now, you stated, Mr. Hull, that you had worked with gloves—you had used gloves?

A. Yes, I have used gloves.

Q. What did you use the gloves for?

A. Well, if at night I would go on a pole that had a great many wires, or raining or wet, I would use the gloves if it was dark.

Q. What did you use the gloves for? What was the object in using them?

A. Well, they are more or less protection.

Q. It is insulation, Mr. Hull, isn't it?

A. Rubber is an insulation, yes, sir.

Q. If you have rubber gloves, and they are in good condition, you can handle live wires without incurring the same dangers that you would if you didn't have the gloves?

A. Yes, sir, they would be of some assistance.

Q. Now, is it necessary to destroy the insulation in tying an insulator on a wire that carries 2300 volts like this?

A. Is it necessary to destroy it?

Q. Yes.

A. No, it is not necessary.

Q. Is it necessary to destroy the insulation?

A. It is not necessary, but nine linemen out of ten will do it.

Q. Nine linemen out of ten will do it?

A. Certainly.

Q. Now, the wire would come over there, would it not, Mr. Hull?

A. On that insulator it would, yes.

Q. On the other insulators it would go on the side?

A. One side.

Q. What sized wire would you use on that in tying that?

A. Oh, I would use a No. 4 perhaps, or 6—4.

Q. What about a No. 10?

A. No. 10?

Q. Yes.

A. Well, No. 10 will hold it. That is all up to the person that wants to do it.

Q. No. 10 would not likely cut into the wire as easy as a No. 4, would it, destroy the insulation.

A. A No. 10?

Q. Yes.

A. Why, if they pull it hard enough it would just the same.

Q. But it would not be necessary to cut the insulation. That insulation is rather hard, isn't it?

A. Yes, it is rather hard.

Q. It would not be necessary to destroy it in order to fasten it substantially on an insulator?

A. Well, it might with No. 10 wire. You might have to cinch it up tight to hold. It would eat into the insulation. You cannot twist a wire around an-

other, and twist it up tight to hold anything, without destroying the insulation more or less.

Q. About how long is the life of insulation of that kind?

A. It is all according to the climate.

Q. In a dry climate how would it be?

A. In a dry climate, if it was put up in the summer time, it would last quite awhile.

Q. Last a year or two?

A. No, no. It would never last a year in the summer, not a whole year in this country.

Q. In a dry climate, I mean.

A. I don't think it would in a dry climate.

Q. Do you know how often the Portland Railway, Light & Power Company have to change theirs here in the city?

A. No, I am sure I do not.

Q. You are not familiar with that?

A. No, I am not familiar with that.

Q. You say it won't last over a year? How do you know it won't last over a year?

A. From experience.

Q. What experience have you had in making changes in cities? Have you made changes within the period of a year of wire of this size insulator?

A. Never necessary to make any changes, but when you have a line strung up, and you are working on that line constantly, you can tell by observation whether the insulation is any good or not.

Q. What do the company do when they find the

insulation is no good?

A. They don't do anything. They couldn't tear the lines down and built it up again.

Q. They couldn't?

A. Well, they could if they made a business of spending their money doing it.

Q. An insulated wire is more expensive than a naked wire, isn't it?

A. A little bit more.

Q. About how much more, approximately.

A. Well, I couldn't say how much more it would be. I don't know what the insulation weighs, per pound. It varies with the different size wires.

Q. Insulation doesn't affect the efficiency of the plant or the system, does it?

A. Affect the efficiency?

Q. Yes.

A. No, sir.

Q. The object of insulating is for the purpose of protecting the wire from coming in contact with other wires, or in case the insulator is broke, from setting fire to the pole on a damp day or a rainy day, is it not?

A. Well, that is the idea of it, but it doesn't do it.

Q. It doesn't do it?

A. No, not in practice it doesn't do it.

Q. Well, why do they go to that extra expense then to insulate?

A. Well, I am sure I couldn't tell you why they do it.

Q. You know in all cities they all are insulated, don't you?

A. Oh, yes, the wires are insulated. Of course taking in the swing, in the center of the spans, an insulated wire will stop it lots of times from shorting an arc up. It will assist in that purpose.

Q. Taking a system as described here carrying 2300 volts, Mr. Hull, you don't mean to say that if the wires had been insulated and the insulation had been in good repair and condition, would the accident then have happened?

A. Well, I cannot say. I don't know how long the wire was there. If the insulation had been perfect, of course the accident would not have happened.

Redirect Examination.

Q. Is it practicable to maintain one of those cross country voltage wires like this, with perfect insulation?

A. No, sir.

Q. Or with perfect weather insulation?

A. No, sir.

Q. There is not a plant in the United States of which you have any knowledge that does that, is there?

A. No, sir.

Q. It would break them up, wouldn't it?

A. Yes, sir.

Q. Have to change their wires so often, wouldn't they?

A. Yes, sir.

Q. Isn't it also true, Mr. Hull,—it has been suggested to me by some of these electricians; I don't know anything about it,—but with this wire crossing that porcelain insulator, you then tie it around here some way, don't you, the tie wire?

A. Yes.

Q. What is the tie wire made of?

A. The tie wire, we usually use copper wire.

Q. And that is brought around here and then up onto this. It is also wound around very tightly, isn't it?

A. Yes, sir.

Q. And that is where you use the pliers?

A. Yes, sir.

Q. And no doubt that would destroy the efficiency of the insulation, wouldn't it?

A. To a certain extent, yes.

Q. So that the work they were doing would of itself have destroyed the efficiency of the insulation to a large per cent?

A. Yes, sir.

Recross Examination.

Q. Now, in making a tie, do you use your hands or your pliers?

A. I usually use my pliers in making my tie.

Q. You don't touch the tie wire with your hands?

A. Putting the tie wire on I use my hands, certainly, to start it.

Q. You start it with your hands?

A. Yes, throw it around the glass with my hands, and tighten it up with the pliers.

Q. But after you begin to tighten it, or it might come in contact with the naked wire, you use your pliers? What kind of pliers do you use?

A. We don't use the pliers on account of contact. I use the pliers so that I can grip the wire to tighten it up.

Q. You don't use insulated handles on your pliers, do you?

A. Usually use insulated handles on my pliers. Sometimes I don't. Usually I do, though.

Q. What is the object of insulating the handles of your pliers?

A. It gives you a much better grip on the pliers, and they are good for the insulation.

Q. Protects you against shock?

A. Why certainly.

(Excused.)

Dr. J. P. WALSH, a witness called on behalf of the defendant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. SMITH:

Dr. Walsh, will you kindly state your name?

A. Dr. J. P. Walsh.

Q. Where do you reside?

A. Cornucopia, Oregon.

Q. You are a regularly admitted and licensed practicing physician in this state?

A. I am.

Q. You are the doctor who first took charge of Johnnie when he was hurt?

A. I was.

Q. The first doctor there. Where was he, when he was hurt, when you first got charge of him?

A. He was brought into the store.

Q. The store there at Cornucopia?

A. The store at Cornucopia, Oregon.

Q. You examined him very carefully, did you?

A. I examined him very carefully, and placed him on the counter on pillows.

Q. We understand that out that way from the city you have to take the best ways you can, and that is all you had there, the counter, to lay him on?

A. That is all I had. I have an office up at the mine. I didn't have any place there down town.

Q. What did you do?

A. I placed him on the counter, and there was considerable contraction. That is, there was great contraction of the fore arm, and the hand, and the fingers. They were all flexed like this.

Q. The muscles seemed to be knotted up, did they?

A. The muscles were knotted up in the arm above here, and in the fore arm they were very hard and knotted.

Q. What was the first thing you had the boys do,

or the first thing you ordered done?

A. The first thing we did after putting him on the counter was to start in and rub the arm, the fore arm first. We rubbed the fore arm and the arm, to reduce the contractions. We rubbed it jointly. And all this time the boy was suffering considerable pain, evidently a great deal of pain.

Q. Those electrical injuries are always very painful, aren't they?

A. Yes, where there is contraction. It is due undoubtedly to contraction of the muscles. And we rubbed his arms altogether probably for two hours, and we finally reduced the contraction to a large extent, in the arms.

Q. That aided circulation, did it?

A. Yes. The circulation in the hand was very poor when we started in. When we finished rubbing his hands, which was probably two hours or two and a half; I don't remember distinctly; I just state it approximately—the circulation was evidently restored.

Q. When you quit rubbing?

A. Yes, when we quit rubbing. The fingers were relaxed, and he could open his hand, and the fingers were relaxed. Now, we got all through, then I asked Johnny to move his fingers, and he did this. (Illustrating).

Q. With both hands?

A. With both hands, yes. With both hands—he couldn't close his hands entirely. I am stating the facts just as I believe they are. He couldn't close his

hands entirely, but partially; but he could move his fingers and thumbs of both hands, and his arms were almost perfectly relaxed; that is, the arms. The fingers were not quite relaxed, and we could not get them thoroughly relaxed.

Q. Now, is it possible for a doctor to tell the extent of an electrical burn by examining the surface?

A. Absolutely no, not at the time.

Q. A deep electrical burn goes in so you cannot tell?

A. They sometimes go away into the bone.

Q. Could you at that time form any opinion of the extent or the amount of the damage that had been done?

A. No. I told the boys that I couldn't tell. I told him, I says, "I don't know the extent of the damage. It may be slight and it may be very great. There is no way of telling, only from the abrasions, the burn on the surface.

Q. Did you notice any burn about his right hand?

A. On the right hand—I am stating this just as I remember it.

Q. That is all we want. That is all any man can do.

A. I don't know that I can state it positively. There was a burn across the wrist here, a severe burn. And I warned the boys several times, in rubbing the hand and the arms not to rub that burn—it was painful. Now, I don't remember the burn across the palm of the hand at that time.

Q. Of the right hand?

A. Of the right hand. I don't remember the burn across the right hand at that time. I cannot recall it. There was a burn up here between the fingers.

Q. On the back of the right hand?

A. On the back of the right hand; between the index finger and the second finger, there was a burn. Now, I didn't notice that burn, because we were rubbing the palms of both hands while we were doing that, and we didn't rub the wrists here where the burn was, but we were rubbing the palms of both hands. The only way I can explain that was, when the muscle here, or the burn extended up here, I don't know, and that the injury was caused afterwards.

Q. Indicating contact with that first on the wrist, and then on the back of the hand?

A. Yes.

Q. The turn of the hand?

A. Yes, of course. When he got the arc, involuntarily his arms contracted.

Q. Now, did you give him any opiate or injection that night?

A. I did, yes, sir. I gave it to him that forenoon. It was about half to three quarters of an hour after he came into the store. The boy was suffering severe pain, and he was asking me constantly to give him something, to do something; that he was suffering pain. And after examining him carefully, and rubbing him, I could see no reason why he should not receive an opiate to relieve the pain.

Q. Did you give him a heavy dose or just a light dose?

A. I gave him a quarter of a grain of morphia and 1-150 of a grain of atropine together in one little tablet.

Q. Would that be enough to put him to sleep?

A. No, not under that pain. A patient under that amount of pain could take a grain of morphine. It depends on the patient, of course, I will explain. Some patients will take more than others.

Q. After that, do you recall when he went out walking, or was taken out walking by some of the boys?

A. Yes, sir. He was walked on the floor. He became drowsy; and I am not an expert on electrical burns. I will explain this, that I have asked men when they have had practical experience with electric burns, and they say invariably the victim will become drowsy without any opiates.

Q. That is because of the extreme shock, isn't it?

A. It is because of the extreme shock. It will happen in any shock, whether it is an electrical shock or any other shock.

Q. When nature starts to relax or recover itself, it produces that drowsiness? Is that it?

A. Yes, sir.

Q. Now, it was just to overcome that, not to overcome the effect of the morphine or the atropine you used, or the medicine, that he was walked, was it?

A. I couldn't state as to that positively. The boy

was getting a little drowsy, and I told the boys "Don't let him go to sleep now. Let us send him up home when he gets comfortable and relaxed," because I had done all I could.

Q. How long would it take him to recover from that quarter of a grain of morphine at that time?

A. With that amount of pain that he was suffering, I don't suppose it would last an hour, or an hour and a half; possibly two hours. Of course, we cannot always tell.

Q. No, I understand.

A. I wish to explain to the jury, as a physician, we cannot always tell the effect a dose is going to have on a patient.

Q. You have to take the subjective symptom of the patient himself?

A. Yes, sir. The same dose will affect different persons differently.

Q. Now, after his muscles were rubbed straight, what was done with him, do you know?

A. He was walked around. The muscles were not rubbed straight for two hours there. Shortly after that he was taken out doors in the fresh air, and walked around, and I didn't see him after that.

Q. Did you order him taken out and walked out in the fresh air, or did the boys do that?

A. No, I did not. I told them to walk him on the floor in the store.

Q. That wouldn't hurt him any, would it, to walk him in the fresh air?

A. I don't see any reason why it should. To the best of my judgment, it would be of benefit.

Q. So while you didn't order it, you would approve of it, would you?

A. I most certainly would.

Q. Now, you saw his arm as he exhibited it here yesterday, and that hand, did you?

A. Yes, sir.

Q. How long have you been practicing, Dr. Walsh?

A. Ten years this month.

Q. Did you notice the portion of his hand that they claim was paralyzed or dead?

A. Yes, sir.

Q. Now, from your experience with the human hand, and your knowledge of its anatomy, and your knowledge of how men use their hand about their work, isn't it true that those two fingers are very weak anyway, and that the greater strength of the hand is in the thumb and fore finger and the middle finger?

A. Yes.

Q. Of course, these others have strength in them. There is no doubt about that?

A. They have some.

Q. From the observation of his arm, what percentage, or what degree of destruction, or loss of efficiency, would you think, in your judgment, there was there?

A. I wouldn't be able to answer that question un-

til I had examined the hand, and had watched Johnnie for a long time, to see what degree of efficiency there was.

Q. You would have to make close observation for a long period to do that?

A. I would have to make close observation. I couldn't answer definitely at all.

Q. With these different nerves and tendons and muscles that control the action of the hand, there is pretty delicate machinery in there?

A. Yes, if they are destroyed, there is no way of telling except by observation and watching him.

(Recess until 2 P. M.)

Q. Dr. Walsh, from your observation of injuries, serious injuries to the arm, have you seen cases where the ulna was removed, or do you know of any?

A. I know of them, yes.

Q. Well, what has been your observation as a physician as to gaining strength as time goes by? Does the arm get stronger or not?

A. The arm will get stronger providing the muscles are not too badly injured, or the nerves.

Q. And from the fact that he can operate that part of the hand, what would be your opinion—would his hand get stronger or not?

A. His hand should get stronger, and he should get more use of the hand in time.

Cross-Examination.

Questions by Mr. RICHARDSON:

Doctor, that would depend altogether upon the

muscles that were left, or tendons that were left in the injured hand, wouldn't it?

A. Yes, it would.

Q. And the nerves?

A. And the nerves.

Q. If there weren't any tendons or muscles left, on account of an operation in removing the ulna, the portions of the ulna and the nerves and the tendons were destroyed, then there wouldn't be any recovery of any strength?

A. No to speak of, no.

Q. Now, Doctor, on your direct examination you stated, I believe, that the boy was brought to the store?

A. Yes.

Q. Now, in what capacity were you working for Mr. Betts at that time?

A. I was manager of the store.

Q. You were manager of the store?

A. Yes.

Q. And also treated the employees in case of injury?

A. Yes.

Q. But you had charge—your main business was you had charge of the store?

A. Yes, I had charge of the store.

Q. You ran the store? That was your business?

A. Yes. It was my duty to always go when I could.

Q. You are at present in the employ of Mr. Betts

and the Cornucopia Mines Company, aren't you, Doctor?

A. I am.

Mr. SMITH: The Cornucopia Mines Company is not a party to this case. I have noticed counsel on two or three occasions put that question in that way. Now, whether he is in the employ of the Cornucopia Mines Company is wholly immaterial, because it is not a party to this case, and it was stated distinctly when the case started. It is against the receiver of the mining company—nobody else. Now, I have no objection to his asking him or any of our men in whose employ they are, nor who is paying them, nor what they are getting, nor anything that is pertinent to the case. But to put the question whether he is in the employ of Mr. Betts and the Cornucopia Mines Company is prejudicial, in that it is not in accordance with the statement as to whom he was suing in this case.

COURT: This action is against the receiver.

Mr. RICHARDSON: This action is against the receiver. That is true—that part of it. But at the same time I would just ask, in order to see whether or not the witness is working for Mr. Betts, and see what capacity Mr. Betts is in now.

Q. Is Mr. Betts the manager now of the new company, Mr. Walsh?

A. I don't know. I think he is.

Q. Well, he is working there?

A. He is working there.

Q. You take orders from Mr. Betts, don't you?

A. I do, yes.

Q. Now, you are at present taking orders from Mr. Betts, aren't you?

A. Yes, sir.

Q. You are in his employ?

A. Yes, sir.

Q. And you were in the employ of Mr. Betts on or about the 28th day of last July, weren't you, Doctor?

A. Yes, sir, I believe so.

Q. Now, when the boy was brought to the store after receiving this injury, he suffered a great deal, didn't he, Doctor?

A. Apparently he suffered a great deal, yes.

Q. The looks of his face and the indications that he gave, you thought he was enduring suffering and great pain?

A. He was suffering considerable pain. I couldn't say how much.

Q. And he wanted you to give him something to stop the pain, didn't he, Doctor?

A. He asked me frequently to give him something to stop the pain.

Q. And that was one reason why you administered an anaesthetic?

A. No, not entirely, because I waited a long time before I gave him anything.

Q. But he was begging for it?

A. He was begging for it.

Q. You never saw the injured hand after he left

that day, did you, Doctor?

A. Not until yesterday, no.

Q. Now, if the doctor who treated and amputated that right hand, and treated the left hand, and performed the operation, if he stated there was a burn down through the hand, the palm of the hand, a good deal larger than a lead pencil, and which was burned and almost burned this finger off, and about through the hand in that direction at least half an inch deep, if that should be the fact that his hand was burned in that way, what, in your opinion, would have caused that deep cut the size of, or a little larger than a pencil?

A. I can only state this, that the burn was not there when I took care of the hand, in the right hand on the palm.

Q. Well, now, you never saw the hand only at that one time?

A. At that one time.

Q. Don't you think, Doctor, that the doctor who amputated the hand and treated the boy would be in a better position to know just exactly how the hand was injured than you would? Some excitement at the time you treated the boy at the mine, was there not, Doctor?

A. Yes, I treated him for minor ailments at the mine.

Q. At the time he received this accident, wasn't there considerable excitement when you had him in the store?

A. No, because I turned almost every one out of the store, and locked the store, so there wasn't more than half a dozen in the store.

Q. You telephoned, didn't you, Doctor, to Mrs. Bisher, to have a doctor at the house as soon as he arrived?

A. After I finished with him, all I could do with him, I telephoned to Mrs. Bisher that I was sending him down in the automobile.

Q. You appreciated that it was a rather dangerous injury, didn't you, Doctor?

A. I didn't know how dangerous, and no one could have told at that time how dangerous.

Q. And you anticipated that it was serious, or you believed at that time that it was a serious injury, didn't you, Doctor, and you were taking every necessary precaution to protect the life of the boy?

A. Yes, sir.

Q. And that was one reason why you telephoned to Mrs. Bisher to have a physician there as soon as the boy could be taken home?

A. Yes, that was one reason, for I didn't know what would result.

Q. Now, don't you think, Doctor, if the doctor who performed the operation and treated the boy for several months in the hospital here in Portland, who amputated the right hand, and who treated and performed the surgical work on the left arm and hand, if he should testify that the injury was as I have stated to you, would you think then that you were mis-

taken about where the burn was on the right hand?

A. I could not possibly have been mistaken about the burn across the palm of the right hand, because when I treated the hand, the burn across the palm was not there, because we rubbed the right hand over the palm.

(Witness excused.)

C. A. BUXTON, a witness called on behalf of the defendant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. SMITH:

What is your age, Mr. Buxton?

A. 35.

Q. What is your occupation?

A. Electrician.

Q. How long have you been an electrician?

A. Well, I have been an electrician for six or seven years, but I have been at the business for about 11 years. I consider myself as being an electrician for the last six or seven years.

Q. Yet you have been following it more or less for 11 years, have you?

A. I have put in 11 years actual time at the business.

Q. Where have you followed it, and what have you done?

A. I followed it at the start in Iowa—Ottumwa, Iowa, for the Iowa Bell Telephone Company, for a

short time, and I got canned. Then I went back to them. They hired me back again, and worked for them there quite awhile again. And then I got a chance of a little better job, and I went working for John Morrell Packing Company of Ottumwa, Iowa.

Q. What did you do there? Was it connected with electricity?

A. Altogether electricity. I went to work there as a lineman, and then I assumed the position as assistant electrician.

Q. Where?

A. At Ottumwa, Iowa, for John Morrell & Company. I was around about their establishment.

Q. What position next did you get, and where?

A. The next that I got in the capacity of electrical work was in Spokane, Washington.

Q. How long were you there?

A. I was there two years; just better than two years.

Q. Working for whom?

A. On the start I worked for the Pacific States Telephone Company for a little while, and then I worked for the A. D. T. and for the Western Union. Then I went to work for the Water Power—Washington Water Power Company.

Q. That is one of the largest electrical companies in the Inland Empire, isn't it?

A. I believe—I am satisfied to say that it is the largest.

Q. Where did you work in the Washington Water

Power's works?

A. It was principally on construction.

Q. Outside construction?

A. Yes, sir.

Q. Did you ever have anything to do with the construction of their system from Postfalls, Idaho, over?

A. Not exactly from Postfalls. When I started to work for them, I went out as we call him straw—I went to work as straw boss out in the Big Bend, or rather out beyond Medical Lake, and they were building a transmission line, 60,000 volt line, from Medical Lake to Pawhaw, or a little town just below there—I forget the termination. But anyway it was 110 miles that we built there in the summer. And then in the fall we was transferred up into the Coeur d' Alenes, and we put in the winter there building from Wallace—Wallace sub-station, that is, up the canyon above Wallace and back down the canyon. We went to the upper end, on account of working in as little snow as we could.

Q. Is that the line that furnishes light and power to the mines in that country?

A. That is the line that furnishes power to manipulate the mines in the Coeur d' Alene district.

Q. Sullivan, Last Chance, and Empire, and all those big mines up there?

A. Yes, sir.

Q. You say you built that from Wallace down—

A. Built a parallel line with the old one. They al-

ready had a 60,000 volt line there, built on what they call the triangle frame—framework. The framework was on a triangle, and I don't recall the exact distance now. But the line that we built was seven-foot spacing.

Q. Now, where did you work after leaving Spokane?

A. After leaving the Washington Water Power Company?

Q. Yes. That wasn't Washington Power line out to Medical Lake?

A. Yes, sir.

Q. That is the one that operates that electric road now, isn't it?

A. I don't know just exactly how they use it. They get juice out that way for to run this electrical road, yes, very true.

Q. After you left Spokane, where did you go?

A. Well, when I left the Water Power, do I understand the question?

Q. Yes, after you left the Washington Water Power Company, where did you go?

A. I went to work for Mr. R. M. Betts.

Q. Down here at Cornucopia?

A. Yes, sir.

Q. And been there ever since?

A. Yes, sir.

Q. For six years?

A. No, sir.

Q. How long?

A. I have been with Mr. Betts for four years; almost four years.

Q. Now, when you worked for Mr. Betts, what have you done there in the way of electrical work?

A. I have done—well, what have I done is the question?

Q. Just in a general way.

A. Yes, sir.

Q. Are you acquainted with this line?

A. Yes, sir. I am acquainted with everything pertaining to the Cornucopia Mines Company electrical system.

Q. From the generation of the electricity to its use?

A. Yes, sir.

Q. Do they run the stamp mills with it?

A. Yes, sir.

Q. Free milling is it?

A. They call it free milling ore.

Q. Now, in the course of your experience, have you done outside line work, Mr. Buxton?

A. Yes, sir. Yes, for the Cornucopia Mines Company. The first summer that I was there, as soon as I could get out, why I took and rebuilt the line from one end to the other, and put it in first-class shape, I will say; and I can have my statement backed up—

Q. Just tell us what you did?

A. Yes. In the first place, I went over the line, and dug out the poles, that is, dug around them and sounded them, would stick a bar into them, or chop

into them, or drive the pick into them, or something to that effect, to see whether they were sound or not, and dig around them in a way so that I could straighten them up, because there was scarcely a pole on the line but that needed some straightening in one way or another. And during the course of this time, this here line was on glass insulators, like you see there, that green glass insulator, tied on the side, and tied with heavy copper, the same as the line, and when I had to straighten up the poles, I had to untie it; and I didn't like that kind of a tie, nor that kind of material for to tie with, so I took and put on a new tie. I used a No. 10 iron, and put on what we call a combination, long distance, standard copper tie, just so as to get more of a cinch on the wire, without so much chance of burning wire, you know, twisting it too much so as to burn it every time.

Q. You are acquainted with the standard sized arm, are you not?

A. Oh, yes.

Q. Is this arm here, this Mutual Exhibit B-1, standard size or not?

A. That is what we call a standard arm, yes.

Q. And the distances between the pegs—are those the ordinary and customary distances?

A. Yes, sir, they are.

Q. As a lineman, you have worked on this identical line, haven't you?

A. I have worked every foot over it, from one end to the other, of that line, the first summer I was there.

And since I have been there, I have worked on it in different places.

Q. From the distance that these pegs are apart, from center to center, the two outer ones, and also from the outer end one to the third one, either way, will you tell the jury whether that is a safe distance, or whether it is a cramped distance, or what?

A. It is not a safe distance, and it is not a cramped distance. The reason that makes us safe when we are on a pole, is because we know that we are in danger whenever we are on a pole, where there is electrical current, we know that it is dangerous. If we didn't know it was dangerous, we would soon get into it. So for that reason we always term it dangerous working with electric currents.

Q. In any working with electricity, it is dangerous work in its nature, isn't it?

A. Yes.

Q. I am talking about the distance it is when you can lift one and put it over, is 30 inches a good space to work in?

A. It is not cramped at all. It is a good space. There is nobody asks for more that I know of.

Q. That is as much as you ever heard given to a man, isn't it?

A. Well, I don't know as I ever heard of more or less, or anything different being asked for.

Q. Anyway, it is plenty of room in there when they take them and push them apart?

A. Yes, sir, there is no occasion for a short circuit.

A man can watch himself so he will get along without any danger.

Q. From your experience as a lineman, will you state—there wires were uncovered over there, weren't they, uninsulated?

A. Yes, sir.

Q. No weather insulation?

A. No weather insulation. All the insulation there was, was the glass on the pin.

Q. That is the insulator to keep them off the wood? Is that it?

A. Yes, that is it.

Q. To keep them from growling in damp weather?

A. Yes, sir.

Q. Will you state to the jury whether that bare wire is a safe way of handling the current through it, or whether it should have weather insulation? Which do you regard the safer, and why?

A. I regard the bare the safest of the two, because a man knows what he has got. He is not going to take a chance on some insulation that he don't know whether it is impoverished through weather, or through making a tie upon it, being cut or anything of the kind. He is not taking any chances on that.

Q. What you call weather insulation is not insulation against a shock then, is it?

A. Why, not at all. A man don't consider it, when he is working on a line carrying 2300 volts, insulation for protection.

Q. Something was said this morning about if one of these wires should drop to the street, and have weather insulation,—some question was asked as to whether it would protect the public. Would it?

A. Why, not at all. One evening in Ottumwa, Iowa, there was a 2300 volt wire fell down on the sidewalk, and the sidewalk was wet, and right in front of a cigar store, and I came out and went down the street, and after I had just got out, along comes another man, and he fell on the sidewalk right there. He got a shock, and he fell right behind me.

Q. Weather insulated, was it?

A. Weather insulated wire, yes, sir.

Q. Then that weather insulation is not a protection against shock at all?

A. It is not considered a protection, and I wouldn't take it as protection.

Q. Now, do you know of any transmission high voltage wire, across country, that is insulated to protect against shock?

A. No, sir, I do not.

Q. How are they up around Spokane there, those 60,000 volt wires, that you spoke of, are they bare, or not?

A. Oh, yes, sir, they are positively bare.

Q. Do you know of any 2300 volt wires up in there?

Mr. RICHARDSON: I don't object to that, but I object to 60,000.

Q. Do you know of any 2300 volt wires up there,

transmission lines?

A. Yes, sir. Through the Big Bend country, there were different short lines of 2300 that was there in the country, that was from our big sub-stations. We step it down from 60,000 to 2300 for transmitting around for power to mills. They have flour mills out there, and I know of one that I will say now that was bare.

Q. 2300, was it?

A. Yes, sir, 2300. But the name of the place I cannot recall it just now. May I ask Mr. Betts what is the name of the place just outside of Spokane, west, Mr. Betts?

Mr. BETTS: Davenport?

A. Beyond Davenport.

Mr. BETTS: Wilbur?

A. No, not Wilbur. It is right in there.

Q. Well, it is around in that vicinity of Davenport and Sprague?

A. It is beyond Sprague. Well, anyway, I can go up into the Coeur d' Alenes. There is different places there where there is short lines that is bare, of 2300 volts.

Q. Now, isn't it true that in those countries the greater part of the cross country lines that carry 2300 volts, are bare?

A. Yes, sir, the greater part of them are bare.

Q. Now, did you hear that testimony this morning or yesterday about the different alleged safety appliances that a man should have?

A. Yes, sir.

Q. About these rubber gloves?

A. Yes, sir.

Q. Did you ever hear of a man using rubber gloves in a place like this was, the middle of July, or the latter part?

A. No, I would say I never did hear at all of it, and I positively never saw it.

Q. Would you work at that work in the latter part of July, in that section of the country up there, that arid or semi-arid belt, would you work on this putting in of insulators with rubber gloves?

A. No, sir, they could not. It would take more than a small raise in salary for me to be bothered with them, and suffer the heat that you would get off them up in that country at that time of the year, off rubber gloves.

Q. Make your hands sweaty, would they?

A. Why they would get sore. They would not only sweat, but they would be so tender that they would be sore with rubber gloves.

Q. In climbing poles, and handling around these cross-arms, any danger of a little splinter tearing the glove and destroying its efficiency?

A. There is all the danger that you can imagine, because these are what we call hard sticks, is our poles. They are tamarack and red fir, and any one will know that they are very splintery, and these here splinters, they are most like glass. There would be all the danger in the world of them being punctured,

and in case of a small puncture like that, where your hands are sweating so, it would be really dangerous, because if you should have a puncture of that kind, and get hold of the other side, with his two wires or one wire in the ground, or anything of the kind, it would be positively, if you would get onto that puncture, dangerous.

Q. Now, would you consider rubber gloves a safety protection up in work of this kind, or would they be necessary at all at that time of the year?

A. I would say that they would not be necessary. And it is like this: If a man had a job there that he considered a little bit close, something like that, there would be one point of protection—that would be one point of protection.

Q. That is where he is liable to catch two wires by the hand—something of that kind?

A. Yes, sir.

Q. Where he has lots of room in there, there is no use of it?

A. In that kind of construction, a man don't want them that I know of.

Q. How about this body protection, this sow-belly? Do they use that on that kind of work?

A. They never do on that kind of work. I have seen protectors that they have used, but I never saw one used on that kind of line. I never used a protector myself.

Q. They use that more where there are lots of wires together, and they have to reach over two or

three to reach a third one?

A. Yes, sir. Or where there is more than one cross-arm on a pole, or where a man will be standing like this, and he will be standing astraddle of the wire, he will have his sow-belly in here so he can work on the other.

Q. So up here there was only one cross-arm on the pole, wasn't there?

A. Yes, sir.

Q. There was no great number of wires? Three was all there was, wasn't it?

A. Yes, sir.

Q. Do you know where that telephone wire is set?

A. Yes, sir.

Q. How far below the arm is it?

A. It is about seven feet.

Q. You never measured it, did you, Mr. Buxton?

A. I never measured it myself, but to see a man on there, I don't believe that he could stand in contact with the telephone wire and reach the other wire. I wouldn't say, but I don't think that he could.

Q. Now, with this class and character of work, would it require him to lean across one wire to reach the other, and would a body protector be of any use to him there at all?

A. A man would not do it, because it is like this: Now, then, we will say this cross-arm is now mounted on a pole. We will say that the pole is here, and that there is a wire out there, and one here, one here, and they are all tied in, and if a man wanted to do

work on this one, and he didn't deem it necessary for to move that one out, he would get right in here on the face of the pole. This is the face of the pole. Here is the pole back here, you see. Here is the cross-arm on the face. He would put his safety around, and then he would swing out under. Of course he would be something like this, and work on this. Of course he would be in a very slanting position, we will say something like that, and here he would do his work.

Q. So that instead of laying down on the wires, or leaning over them, he would throw himself out below the wires?

A. Yes, sir.

Q. And avoid all danger?

A. Yes, sir.

Q. What is the highest—what is the hottest wire you ever handled bare-handed?

A. 6600.

Q. Did you have that more than once, frequently or not?

Q. I have handled it several times this last winter.

Q. Is that considered as dangerous as a 2300?

A. It is considered more dangerous, yes, sir.

Q. How long have you been up there on this line?

A. I have been at Cornucopia little less than four years, not quite four years yet.

Q. During your whole time there, was there ever a man hurt on this line outside of this boy?

A. No, sir. No, sir, there never was a man that got anything that ever called my attention to.

Q. Did you know that day, or did you know that this boy was up on those poles?

A. No, sir, I didn't know that he ever was on the poles. So far as my knowing, I don't know that he got burned on the pole only from what—

Q. Just what they have told you?

A. What they have told me.

Q. Of course you believe it?

A. Yes, sir, there is no doubt about it.

Q. You didn't know he was professing to go up those poles?

A. No, sir. I didn't know he had any intentions of going up the poles.

Q. For these purposes?

A. For these purposes.

Q. Did you ever give him a pair of climbers?

A. I give him the privilege of a pair of climbers and insisted he should take them.

Q. What for?

A. So in case Harry Harbert got hung up—our lineman—Johnnie would be there to render the same assistance that Harry did to Johnnie.

Q. You knew that he could climb poles, did you, when you hired him?

A. That is why I hired him; because when Johnnie asked me for the job, it was down town, and Johnnie was working for Mr. Betts at the time on the hill, and when Johnnie spoke to me, I says, "Yes, Johnnie, I

thought of you, you being able to climb, why, there will be a chance for you, and" I says, "Have you got a pair of hooks?" He says, "Yes." "Well," I says, "I have got a pair down there that you can use, but the probabilities are that you would rather use your own rather than use strange hooks, and I would like for you to have a pair along with you, so that if anything happens to Harry, you will be able to get up and down the stick, and you had better have your own hooks," meaning that if anything happened to Harry—Harry Harbert, our lineman—if he should get burned or hung up, as we call it, why Johnnie would be there, would have hooks, so that he could get up to help him.

Q. Did you know that Johnnie had ever tried to tie any wires on those insulators?

A. No, sir.

Q. You didn't know it at the time, did you?

A. No, sir.

Q. Didn't hire him for that purpose?

A. No, sir.

Q. What did you hire him for?

A. I hired him to do ground work as a helper, and it was understood that that was what he was for.

Q. Now, did you ever instruct him—you heard his testimony about your showing him how to make a tie?

A. Yes, sir.

Q. Did that ever happen, Mr. Buxton?

A. Why I never did show Johnnie. I remember

of showing Harry how to make the tie, and if Johnnie, why if he was there and asked any questions, I have no doubt but what I answered them.

Q. You were always glad to inform him if he wanted to know anything?

A. Always; because I never know anything so well as after I have told somebody else.

Q. So that if he did get any talk from you, it was just as a matter of information? Was that it?

A. Yes, sir.

Q. You were not instructing him about any duty then?

A. Not that he had to perform.

Q. And you don't remember of ever having done that, do you?

A. I don't remember, no, sir.

Q. Do you remember positively of instructing Harry how to tie those wires?

Mr. RICHARDSON: Now, may it please the Court, this is the first time I have made an objection, but Counsel has been leading his witnesses until it is kind of nettling. He is putting words in their mouths.

COURT: You may proceed with your examination.

Q. Now, after Johnnie was hurt, where did you first see him, Mr. Buxton?

A. In the store at Cornucopia.

Q. All you know about the injury is what was told you? You don't know anything of it? You didn't see it yourself, did you?

A. All that I know of the injury is what I saw and what was told me there.

Q. What were they doing?

A. They explained to me that he was on the pole and got burned.

Q. What was being done at the store when you saw him?

A. They were massaging his arms. They had his sleeve rolled up, or his arms was bare anyway—I don't remember just how his sleeves were; but anyway his arms were bare—and they were rubbing them any trying to work his fingers. At that time when I got there, his fingers were cramped very firm, and there was no chance to move them, but they were rubbing on his arms, and his arms here was all knots. His muscles was just drawn up into knots.

Q. Now, after that was done, and there in the store, did he seem to be conscious of what was going on—know things did he?

A. Apparently. Whenever we spoke to him, why, he answered, and we carried on, you might say, a disjointed conversation. I don't remember of the boy saying anything at random.

Q. Well, did he talk to you at all?

A. Yes, sir. When I came into the store, Johnnie says to me, he says, "Well, Buck, she is a hot one." I says, "Yes, Johnnie, she is hot dope; any time you get tangled up with 2300, you have got hot stuff." And it went on, and just that is all that was said just then. But anyway, Johnnie says, "Well, Buck," he

says, "it was all my own fault." I says, "Never mind, Johnnie. It can't be helped."

Q. Now, will you please tell the jury what his duties for which you hired him required him to do?

A. He was required for to go along on the ground, and to take wire along, and if necessary, to cut it up into tie wires of the proper length, and carry these insulators. The insulators were at the store, and he was to carry these down onto the line, and distribute them along the poles. And when Harbert was doing his changing, he was to send these tie wires and these insulators up onto the pole by a rope, by putting them into a sack, or tying them onto the rope, or any way that was convenient for them to get them up there on this rope.

Q. Harbert was furnished with this rope, was he, to let down and pull up?

A. Harbert had what we call a hand line, and had it with him. It was there—I saw it near the pole afterwards; and they had a sack there that I saw afterwards. I went and got pins out of the sack. There were some locust pins in the sack, and I went and got them out of the sack they had along with them.

Q. You say you expected him to cut off tie wires?

A. Yes, sir.

Q. From a long wire, was it, or what?

A. They generally had a coil of wire. There was some wire along there.

Q. What would he use to cut off these tie wires with?

A. Pliers. He had a pair of pliers, six inch, as I remember it, that was shiny, nickel-plated. They are not a lineman's pliers exactly, but in his kit I saw a pair of shiny pliers, as I remember it.

Q. Where is the cutting device on those pliers, what part?

A. Why, right in the shoulder, right back in here. And then here is a sort of an opening here, and then here out further here is a plier part, where they come together, and then right in here was the cutting apparatus.

Q. Just throw a wire in there and shut them together?

A. Yes, sir.

Q. Now, was there any work that Johnnie was required to do there, or that you knew he was doing, that required any rubber gloves, or any wrapped or insulated pliers, or any sow-belly, or anything of that kind?

A. There was nothing that I knew of that he was doing that would require anything of the kind, and if I had suggested that he have rubber gloves or anything of the kind, why, no doubt in the world but what he would have turned it down.

Q. Well, now, about the talk that he claimed that was given, I believe,—oh, yes, did you ever tell Harbert to use him on the line, or anything of that kind?

A. No, sir.

Q. Did you ever tell him to obey whatever Harbert said, outside of just this ground-work?

A. No, sir, I never told him to pay any attention to Harbert in any way. I just told him he was to help Harbert. And every man that does ground-work, or is ever hired, or ever works around the line, they soon learn the terms of what ground work means.

Q. Had he worked there before?

A. Not on the line; but the year before I made some taps up in the mill, and Johnnie helped me, out of this 2300. And we worked between this 2300 and some light wires, on a scaffold. The light wires was right behind us carrying 110, and I cautioned him to be very cautious to guard them, too, as if he should touch one of them and me, it would be no better than touching the two at 2300, and I cautioned him very cautiously for to not touch me while I was busy there.

Q. Now, there is something said in the complaint here to the effect that you didn't furnish him any ladders out there? Did you ever heard of ladders being used out on a piece of work like that?

A. Never on a transmission line, no, sir.

Q. The boys climb the poles, don't they, with these climbers?

A. Those climbers, yes, sir. And I suggested, Johnnie have a pair of climbers along with him.

Q. Now, you know, of course, that a man has to have double contact, or double touch somewhere to get a shock?

A. Yes, sir.

Q. You regard it as a safe method of work for a

man to work lifting this 2300 volt wire back and forth, if he doesn't touch any other wire?

A. It is positively safe under the conditions of the weather and general conditions at this time.

Q. Is there any possible duty that you can think of, or ever heard of, that Johnnie would be discharging if he got against both of the wires at the same time—was there any duty that required him to do it?

A. No, sir. If he did it would be done thoughtlessly, not at the discharge of his duties.

Q. Now, he was always a good working boy in there, wasn't he?

A. Yes, sir. Everybody liked him.

Q. He seemed to take an interest in his work, and tried to learn as he went along?

A. Everything that Johnnie undertook to do, he took an interest in it, and tried to do better.

Cross-Examination.

Questions by Mr. RICHARDSON:

Mr. Buxton, you are at present in the employ or under orders of Mr. Betts, aren't you?

A. Yes, sir.

Q. And you have been since last July, the 28th?

A. Yes, sir.

Q. Do you know why Mr. Mills sent Johnnie down to you to go to work on the line?

A. Yes, sir.

Q. Why?

A. I asked Mr. Mills for Johnnie, if I could have

him; and Mr. Mills was his foreman; and after Johnnie speaking to me about this, I saw Mr. Mills on the hill—that is up at the mine—and asked him if I could have Johnnie to work on the line, and he told me yes. So when I sent for Johnnie, I guess Mr. Mills sent him down. Anyway he came down after I sent for him.

Q. Now, you told Johnnie he was to help Harry Harbert, didn't you?

A. Yes, sir.

Q. And he would carry thing along, and send them up, and do what Harry told him to do?

A. I told him to help Harry Harbert. I didn't tell him that he was to do as Harry told him to. Johnnie understood that I was boss—if you want to term it that way. He was working for me.

Q. You told him distinctly that he was to go there and help Harry, didn't you, Mr. Buxton?

A. Yes, sir, I told him to go and help Harry.

Q. And that Harry would tell him what he wanted him to do, if he wanted some insulators, he would have him send up insulators, if he wanted tie wire, he would have him send up tie wire?

A. Yes, sir.

Q. Johnnie was an obedient boy, wasn't he, Mr. Buxton?

A. Yes, sir.

Q. He usually did what you told him to do, didn't he?

A. Yes, sir, he tried to.

Q. He was well liked, wasn't he?

A. Yes, sir.

Q. He did the things that you ordered him to do?

A. Yes, sir.

Q. He wasn't disobedient, was he?

A. No, sir.

Q. Now, you were speaking of your work as a lineman. Have you ever been known as a lineman—electrical worker known as a lineman, that is a distinct business of itself, isn't it, Mr. Buxton?

A. Yes, sir, distinct.

Q. Now, have you ever allied yourself with that class of electrical workers so you would be known as an electric lineman?

A. Yes, sir.

Q. You have?

A. Yes, sir. I belong to the new union in Spokane—703.

Q. You belong to the union in Spokane?

A. Yes, sir, 703. Then it was a joint union, the inside and linemen, both had the same union, or both belonged to the same number. But since that it has been split.

Q. Now I will ask you to examine, Mr. Buxton, this piece of copper wire that I now hand you, and ask you what that is?

A. It is weather proof copper wire.

Q. What size is that copper wire?

A. I would say No. 4, looking at it from my general observation, I would say it was size No. 4.

Q. Size No. 4. Was that about the size that was used on the power line of the Cornucopia Mines Company?

A. That there is smaller.

Q. That is a little smaller?

A. Yes, sir.

Q. Yours was a size larger?

A. Yes, considerable larger. Our transmission line was larger than that lead pencil.

Q. A little larger than that lead pencil?

A. Yes, sir.

Q. Now, Mr. Buxton, what is the object of that insulation? You have seen a lot of it haven't you?

A. A lot of it, yes.

Q. You have seen it strung for miles, haven't you, Mr. Buxton?

A. Yes, sir.

Q. Now, it is more expensive than the naked wire, isn't it, Mr. Buxton?

A. More expensive per foot, yes, sir.

Q. Yes, on account of you pay just as much for the weight of that as you would for the weight of solid copper?

A. Yes, sir.

Q. And it is practically twice as heavy isn't it, as the naked copper wire itself.

A. That wire there is almost, yes.

Q. And it would cost approximately twice as much as an insulated wire, wouldn't it, Mr. Buxton?

A. I would judge almost.

Q. Practically. Now, what is the object in using it? You never saw any of these wires carrying a voltage of 2300 volts in the Cities of Spokane or Portland, or any other city, naked, uninsulated, did you, Mr. Buxton?

A. I wouldn't say that I did.

Q. Now, what is the object of insulation?

A. A matter of protection.

Q. A matter of protection?

A. Yes, sir.

Q. Now, supposing, Mr. Buxton, that on the 28th day of July, 1912, you would have had an insulated wire, insulated transmission system, all three wires would have been insulated with insulation like that—that is a dry climate, isn't it?

A. You would call it a dry climate at time of the year, yes, sir. It was dry at that time.

Q. And it was dry at this time?

A. I wouldn't say now. It hasn't been dry, but it is probably dry now.

Q. Now, if the plaintiff, Johnnie Bisher, would have come in contact with a wire properly insulated, as this is insulated here, would there have been any accident?

A. As that is insulated there, there wouldn't have been any accident.

Q. If it had been defective, or if it had been broken, or old and worn, or rotten and decayed, it would have been dangerous almost as much as if it was naked wire, wouldn't it?

A. It would have been more so, because they would probably have taken a chance where being naked they wouldn't.

Q. Now, suppose Johnnie had had on rubber gloves that came up to his elbows—you have seen those rubber gloves that linemen use, haven't you?

A. Well, I don't know. I never did see a long pair of rubber gloves.

Q. How long has it been since you worked as a lineman, Mr. Buxton, that is, regular lineman in Spokane? You worked as a lineman in Spokane, did you not?

A. Five years.

Q. And the only work you have done as a lineman since five years has been work that you have done for Mr. Betts at the Cornucopia Mines, near Halfway, Oregon—is that right?

A. Well, I will say the summer before I came to work for Mr. Betts, why, of course, I did considerable work as a lineman—while that was voluntary on my part, but at the same time it was lineman's work, but while I was discharging this here duty, why, I was considered as a lineman.

Q. Now, isn't there another object of insulation, that if a wire is insulated, if it comes in contact with another wire in case of a storm, or if the tie wire should break and it should drop down on the pole, if it is insulated, there is no danger, is there?

A. Yes, there is.

Q. What danger would there be if the insulation

is good insulation? I am speaking of not defective insulation, but I am speaking of insulation.

A. Well, we will understand as good insulation as that there insulation as it stands right now is good insulation for weather proof?

Q. Yes.

A. But in case that it should be wet and drop down onto that cross-arm—

Q. And the cross-arm was wet?

A. And the cross-arm was wet, with 2300 volts, there would be danger of a ground.

Q. There would be danger of a ground?

A. Yes, sir.

Q. Now, what does a lineman wear rubber gloves for?

A. Well, in case that they get cramped into a cramped place, where they don't have room to work, don't have a chance to guard themselves, and it is almost impossible for them to get through without touching one side or the other, or very small chances for them to get through, they will wear rubber gloves.

Q. If they have got rubber gloves on, that is an insulation, isn't it, Mr. Buxton?

A. It is an insulation, yes.

Q. You can take two good rubber gloves and hold two different live wires with them, can't you?

A. It depends on what voltage there is on the wires and how old the rubber gloves are.

Q. Do you know what the test that rubber gloves that linemen work with, what the test is run up to,

what test they are guaranteed or rated up to?

A. No, sir.

Q. Didn't you know that they had a test that each glove that is sold as a lineman's glove bore and was tagged as a test, a certain number of volts?

A. I know that they are, but I don't know what the test is, and furthermore, that there is only while they are perfectly new.

Q. That is when the gloves are in good condition?

A. Yes, sir.

Q. Now, remember, Mr. Buxton, I am asking you about gloves in good condition?

A. Yes, sir.

Q. Gloves will wear out as anything else will wear out, as insulation will wear out?

A. Yes, sir, and rubber as insulation will wear out.

Q. How often do the companies that you have worked for, that had weather insulated copper wires, how often do they change those wires?

A. Well, back east there where I worked, there was a lot of our wires, 4-0 and larger, that was condemned, that we had to tear down.

Q. What was it condemned for?

A. For poor insulation. It was weather proof outside wires. But instead of us tearing it down, we put—I forget how many men, but some men to work on these wires, and painted them with P & B paint, and they passed inspection without any hesitation. They never were noticed after that.

Q. Do you mean that that was a good insulation?

A. I mean that it fixed them up in a way so that the next time that they were inspected, they were not turned down.

Q. You mean that the insulation was good afterwards?

A. No, sir.

Q. In other words, you mean that you deceived the public?

A. It was a matter of deception, yes, sir.

Q. That was done for the purpose of not incurring greater expense?

A. It was for the matter of cutting down expense.

Q. Cutting down expense?

A. Yes, sir.

Q. Now, you don't mean to say that if you had insulated wires over at Cornucopia instead of uninsulated, that it would injure the efficiency of your plant, do you, Mr. Buxton?

A. Yes, sir.

Q. It would injure the efficiency of your plant?

A. Yes, sir.

Q. In what way?

A. It would add resistance to the line; imperceptible, but at the same time, it can be figured out as to what it is.

Q. To what extent—to any practical extent, of practical notice?

A. No, not to practically notice, no, sir.

Q. So that practically, you could operate just as well with insulated wires as you can with uninsulated

wires, couldn't you, Mr. Buxton?

A. Practically the same, yes, sir.

Q. Now, you said that this was a standard gauge cross-arm, did you, Mr. Buxton?

A. Yes, sir.

Q. How do you know that it is a standard gauge cross-arm?

A. Because it is what we used in the Coeur d' Alenes, and through the Big Bend. It is the same thing in this western country. Now, back east we didn't use that same cross-arm.

Q. Now, what did you use back east?

A. We had a seven pin cross-arm.

Q. Seven foot?

A. Seven pin. And our system was Y-connected, and we had a neutral. We had four wires, three phase on one side, and the neutral, and three phase on the other side.

Q. Now, Mr. Buxton, this is bolted through a pole—that is a round pole, isn't it?

A. Yes, sir.

Q. And it is sawed into, and the cross-arm is nailed onto a place that is chipped out of the pole, and bolted onto the pole?

A. It is fastened onto the pole, yes, sir.

Q. How many inches in diameter do you suppose that pole is at the top? Have you ever measured one?

A. Harry Harbert measured this pole, and it measured 32 inches in circumference.

Q. 32 inches?

A. So Mr. Harbert said, yes, sir. I didn't measure it myself.

Q. Now, in making these changes, you stated that if there were two transmission wires carrying a voltage of electricity of 2300 volts on these insulators, and one over here, that whenever you made any repairs on this one, you would move this one over there?

A. Yes, sir.

Q. What did you do that for?

A. For to give room to work on this there. A man could stand almost erect, and work very easily.

Q. Would it be impracticable to place a third wire on the top of the pole? You have seen that done, haven't you?

A. Oh, yes, sir. All our construction the year before I came to work for Mr. Betts our third wire was over the top of the pole.

Q. All of it?

A. Yes, sir.

Q. And left the distance between the top of the pole and the end of the cross arm for the workman to make his repairs?

A. No, it didn't leave any room there at all, because it was not worked on. It was 60,000 stuff, and we didn't work on it.

Q. You didn't work on it?

A. No, sir, not alive.

Q. You didn't work on it alive?

A. No, sir.

Q. Why didn't you?

A. Because nobody wanted to try it.

Q. Too dangerous?

A. Yes, sir.

Q. Do you know why they insulate wires around dwelling houses and places of that kind, Mr. Buxton?

A. Because the voltage is light, and they can insulate them.

Q. They can insulate them?

A. Very practically, yes, sir. Then can use rubber covered.

Q. It is a little expensive, is it?

A. Yes, sir, it is quite expensive, because they have got to use rubber to do it.

Q. But it can be done successfully?

A. On low voltage, yes, sir.

Q. Up to how high voltage?

A. Well, to 500, practically, everything up to 500 they figure safe for insulation.

Q. And with 2300, they use weather proof?

A. Yes, sir.

Q. In practically all cities and towns?

A. Yes, sir, as I understand, from what my experience has been, they do.

Q. Do you know of any other, any system in Oregon, outside of the one in Cornucopia, that uses 2300, a transmission system of 2300 volts, that don't have weather insulation on their transmission lines?

A. I am not acquainted in Oregon. I cannot say that I know of a transmission line of 2300 outside of our own in the State of Oregon, whether it is insu-

lated or not.

Q. You know where Mr. Panter lives, Mr. Buxton?

A. Yes, sir.

Q. How far is that from the power house?

A. We will say it is almost three-quarters.

Q. Three-quarters of a mile?

A. It is less than three-quarters, and it is better than a half mile.

Q. A little more than half a mile?

A. Yes, sir, that is from the old plant. Speaking of the plant that we was running on the 28th day of July last year?

Q. Yes.

A. Yes, sir.

Q. Nearly three-quarters of a mile?

A. Something like that. I cannot say the distance, but it is better than a half, and it is less than three-quarters.

Redirect Examination.

Q. How long does weather insulation last, Mr. Buxton?

A. Well, it is not considered, after a year, we will say, it is not considered as insulation any more.

Q. Even for weather purposes?

A. Not even for weather purposes.

Q. How long will weather insulation last in a perfect condition?

A. A short time.

Q. The first rain does it up, doesn't it, for that purpose?

A. A man doesn't want to take any chances on it after it has been out there, after the first rain, we will say.

Q. Now, would it be practicable for any electric light company, operating a cross country transmission line, to keep its wires perfectly insulated with weather insulation? Is it possible for them?

A. It is not possible, and there is no way—there is no law nor anything of the kind that could make them keep it in first-class insulation.

Q. Bankrupt any company to do it, wouldn't it?

A. They would never start at all. Yes, it would break any company.

Q. Counsel brought out something about the wires being insulated on low voltage. Right here this little light wire is perfectly insulated, isn't it? (Referring to wire attached to lamp.)

A. Yes, sir.

Q. How many volts, about? Can you tell by the globe?

A. That there is probably for 110. I don't know just what the test will be on that cord, but that there light is probably 110 volts light.

Q. Can you look at it and see?

A. This here says, marked with lead pencil, 126 volts.

Q. And that is the reason, because of the low voltage is the reason they can put that up in silk, and you

can handle it, isn't it?

A. Yes, sir.

Q. They couldn't do that with 2300 voltage, could they?

A. And that there is more than likely cotton. It don't have to be silk.

Q. About these rubber gloves here that they speak of, about this rubber glove that he brought out—was there any duty that this boy had to perform that would require rubber gloves?

A. No, sir.

Q. Did you offer Harry Harbert rubber gloves, or direct his attention to it when he went to work?

A. No, sir, never thought of it being necessary at all.

Q. And you state this is the only accident that ever happened up there?

A. It is the only accident that ever happened under me—anywhere.

Recross Examination.

Q. Mr. Buxton, you said, I believe, in your redirect examination, that you didn't think it was practicable to have this weather insulation?

A. I don't.

Q. Have you ever observed the insulation of electric wires in transmission lines from the sub-stations all over the city?

A. No, sir. I haven't been in here only a day or so, two or three days, and I have not.

Q. Don't you know as a matter of fact that they are all insulated?

A. I believe that they are. I believe they are. I have not noticed them, but I will believe that they are positively, right here under City Ordinance.

Q. Don't you know that they are required to keep them insulated?

A. No, I don't know from my own knowledge; but I understand that they are required to keep them insulated, and while they are required to keep them insulated, they don't do it—they will practice deception, the same as we did back east.

Q. How do you know they don't do it?

A. My experience has showed me so.

Q. Have you read of many accidents in Portland?

A. Yes, sir.

Q. Recently?

A. I cannot say of any real lately; no, I cannot recall.

Q. You know there are hundreds of these lines carrying 2300 volts, in these sub-stations, through the transformers, don't you?

A. Yes, sir, undoubtedly there is hundreds of them.

Q. In a city of this size?

A. In a city of this size.

Mr. SMITH: If the Court please, I have no objection to the examination, but I understood the Court ruled this morning—

COURT: I don't think it is necessary to pursue it.

(Witness excused.)

G. R. LADD, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. SMITH:

Mr. Ladd, what is your first name, please?

A. My name is George Ranse Ladd.

Q. Where do you reside?

A. Cornucopia.

Q. How long have you lived there?

A. I have lived there off and on the major portion of the time since 1900.

Q. What is your occupation, please?

A. Miner, contractor.

Q. Underground worker, underground miner?

A. Underground miner.

Q. Do you know the plaintiff, Johnnie Bisher?

A. Yes, sir.

Q. How long have you known him?

A. I have known him slightly for four or five, maybe six years.

Q. You have known him up there at Cornucopia, haven't you, Mr. Ladd?

A. I have known him at Cornucopia, and also at Pine Valley.

Q. Did you see him the day he was hurt?

A. I did.

Q. Where was he at the time you saw him?

A. When I first saw him he was in the wagon at

the Cornucopia Trading Company's store right in front of the building.

Q. They took him from there in the store, did they?

A. Harry Harbert and Justice McKinnon carried him in.

Q. What did they do with him there?

A. When they first took him in, or first brought him up, there was quite a crowd gathered round, to find out what was the matter. I was among, I was on the outside. I didn't go into the store at first, because there was quite a little crowd gathered in there, and I thought that maybe my room would be worth more than my company.

Q. You afterwards went in a little later?

A. Afterwards they started to clear the store out, and I asked J. P. Walsh if I could be of any assistance, and he told me that the boy's arms were cramped and so on, and that they had to massage his arms.

Q. And you worked there under the doctor, did you?

A. And I might help rub his arms, if I would.

Q. Did you do so?

A. I walked inside, and they had him laying on a counter, and I commenced to rub his arms.

Q. His muscles were knotted at that time, were they, drawn up?

A. Very much in this manner.

Q. Suffering a good deal, wasn't he?

A. Intensely, I should judge.

Q. Now, did you help rub his muscles out, as you call it?

A. I did.

Q. And about this direction?

A. Yes, sir.

Q. About how long did you work at that, Mr. Ladd?

A. I don't know exactly, but I judge it was an hour, or maybe an hour and a half.

Q. Did you see and notice his mental condition at that time? Was his mind clear, or what?

A. His mind seemed to be perfectly clear. At the time that I first went in, he was suffering intensely, so I thought, and he was groaning and screaming. He says, "Oh, God, I can't stand it."

Q. Now, after you had rubbed his muscles out, did it seem to relieve his pain any?

A. He began, as soon as his cramps, or knots in his arms began to come out, he appeared to become easier.

Q. You were there when the doctor gave him this injection, or whatever it was he gave him?

A. I was.

Q. Did you notice his mind after that?

A. I did.

Q. Was he cognizant of what was going on? He recognized you, did he?

A. Yes.

Q. Talked with the boys around there?

A. Yes.

Q. Now, after you started down with him, were you in the automobile in which he rode?

A. I was.

Q. What was his mental condition then?

A. Clear.

Q. Did he appreciate who was around him, and what they were doing?

A. Seemed to.

Q. Did you talk with him any about how he was hurt?

A. I didn't talk directly with him. I didn't ask him any questions, but disconnected conversation—I heard a good deal of disconnected conversation addressed to me and Harbert.

Q. By him?

A. By him.

Q. He was doing the talking, was he?

A. Yes, sir.

Q. Did he talk about how this thing happened?

A. Yes.

Q. What did he say?

A. In the store, while we were in the store, and he was suffering so intensely, at first he didn't say anything except to scream and "My God, I can't stand it. It is killing me," and begged the doctor to give him something to ease the pain. And after his muscles began to relax, why then he told, the first thing was in about probably after half an hour—I had been in there half an hour or so—Buxton came in, Charles Buxton, and Buxton was rather excited too, and he

says—I may not get the words exact, but he says, “Jesus Christ, this is Hell,” or words like that,—some oaths.

Q. Buxton said that, did he?

A. Buxton said that. And he worried, seemed to worry considerable. There was quite a little disconnected conversation, or exclamations uttered by Buxton, and Johnnie had begun to, and then Buxton—I was on the outside of the counter, and rubbing his left arm; Buxton and Harbert were on the inside, and was rubbing his other, rubbing his right arm; Walsh was occasionally taking turns in chafing his hands—and after he began to get easier and become more conscious of everything that was going on, he reassured Buxton, he says, “Don’t worry, Buck. It is not your fault. You ain’t to blame.” And shortly afterwards Harbert asked him, “How did it happen, Johnnie?” Johnnie said, “I was holding one wire,” he says, I was standing up there with my hand on one wire, and I don’t know how I connected with the other.” He says, “I must have got careless.” During the early part of my time there in the store, Doc Walsh give him an injection in his arm. supposedly—I supposed it was morphine. I didn’t ask him what it was, or anything.

Q. All right. He gave him an injection. He has testified what it was.

A. Yes, to relieve the pain a little, and Johnnie kept begging him to give him more to dull this pain—said he couldn’t stand it. Walsh said, “I don’t want to

give him any more than I positively have to," he says, "because it might stop the action of the blood, retard the circulation." He told me, "The only thing that we can do is to try to keep the circulation, restore circulation in these hands."

Q. That is the reason you were rubbing him, was it?

A. That is the reason.

Q. Now, is that all the conversation, about, that you recollect there at the store?

A. After the flesh on his arms and hands began to get soft, and the pain seemed to leave him, he began to get sleepy—very sleepy. He wanted to go to sleep, and Doc Walsh said, "I wouldn't let him go to sleep now. I wouldn't let him go to sleep, because it might retard circulation, have a tendency to stop the circulation, and you had better walk him around in the store; better walk him around, and keep him awake if you can." So we walked him around in the store, and occasionally he kept begging to "let me go to sleep." But as we walked him around, we massaged his arms all the time, and occasionally, of course, when he would get pretty sleepy, we was a little rougher than we would be otherwise, and any sudden twinge of pain would bring him to. It didn't seem very long to me before he began to walk off the effects of this morphine, or whatever he had; and then someone took him outside, but I don't know who it was, whether it was Walsh or Buxton. I think it was Buxton, though, that asked me if I would go down in

the auto with him and take him down. I said, "Yes, anything that I can do."

Q. And you did go down in the auto, did you?

A. I went down in the auto. Meanwhile I went up to my house,—I have a place up there, and lived there for a number of years—I went up to the house, and told my wife I was going down—

Mr. RICHARDSON: That is not material, Mr. Ladd, about what you told anybody.

A. Meanwhile, I think it was Buxton walked Johnnie around the town.

Q. You know of him being walked around the town anyway?

A. Yes. And I came down town again, prepared to go down to the valley; and they said—I think it was Batty, says, "We will be ready to start in a moment." Batty was the man that ran the car. And pretty soon we were ready to start, I got in the machine, and asked where Johnnie was, and they said, "We will pick him up down the line." Him and Harbert went down the road, and somewhere below town, probably half a mile or so, why we picked up, we overtook Harbert and Johnnie, and picked them up, Harry sitting on one side of Johnnie, and I on the other side. And as we rode down, we kept working his arms, and massaging the flesh of his hands and arms here. As soon as we stopped, the hands and arms swelled up again, the skin began to get tight and hard, and the fingers, some of his fingers would begin to turn black.

Q. Now, while you were riding along there, did he make any statement about how this happened, or whose fault it was?

A. He said to Harbert he didn't know how it happened, but he must have got careless; he didn't have anybody to blame but himself, he said. He also says, told Harry Harbert that he owed his life to him; maybe not in exactly those words, but in practically that same thing, "if it hadn't been for you, I would have been a goner."

Q. Words to that effect, was it?

A. Words to that effect.

Q. Now, at the time you rubbed his hands, did you rub his right hand, or did the other boys rub his right hand?

A. Buxton rubbed his right hand, Buxton and Harbert.

Cross Examination.

Questions by Mr. RICHARDSON:

Mr. Ladd, who were you working for on the 28th of last July?

A. I wasn't working.

Q. You had been working for whom? You had been working for Mr. Betts hadn't you?

A. No, sir.

Q. You had not?

A. No, sir.

Q. Hadn't you ever worked there in the Cornucopia Mines?

A. I have.

Q. Who were you working under?

COURT: I don't think this is cross examination.

Q. You have been in the employ—you have been working over there at the mine, haven't you?

Mr. RICHARDSON: I want to show his relation, your Honor.

A. I have worked there one time about five years ago.

Q. Haven't worked there since?

A. Not for the Cornucopia Mines Company.

Q. Or for anybody else? Who else did you work for?

A. I worked for Colonel W. R. Abercrombie of Spokane, on the Red Mountain.

COURT: I don't think that is necessary.

Mr. RICHARDSON: I wanted to show his relation to the defendant.

A. I will state that for the last four or five years, your Honor, I have been contracting, and I haven't worked but very little for wages.

Q. You have been contracting?

A. Yes, sir.

Q. What kind of business?

A. Mining.

COURT: I don't think that is necessary. It takes this witness a long time to tell what he knows.

Mr. RICHARDSON: I am trying to find out his business, your Honor. I am trying to find out the witness' particular business.

Q. What is your particular business?

A. Mining.

Q. What have you been doing recently?

A. The last few months I have done nothing. The last work that I did was in the Last Chance Mine, Cornucopia, Oregon, leasing.

Q. How long ago?

A. Last October.

Q. Whom does the Last Chance Mine belong to?

COURT: I think that is immaterial.

Mr. RICHARDSON: My object, your Honor, was to show his relationship.

COURT: If you wish to show his interest here you may show that.

Mr. RICHARDSON: That was the object.

Q. The Last Chance Mine is owned by—

COURT: I don't think it is necessary to disclose that fact any further.

Mr. RICHARDSON: Very well.

Q. Now, you stated, Mr. Ladd, that Johnnie was suffering considerably during this time, I believe?

A. It appeared to me that he was.

(Witness excused.)

Mrs. KITTIE B. GRAY, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. SMITH:

Your name is Mrs. Katherine Gray?

A. Mrs. Kittie B. Gray.

Q. Where do you reside, Mrs. Gray?

A. Halfway, Oregon.

Q. Do you know Johnnie Bisher, the young boy in this case?

A. Yes, sir.

Q. How long have you known him?

A. I have known of him, but the first time I met him was up at the mine last year, some time in July, I think it was, or August—the first of August. I don't remember.

Q. You have known of the family quite a little while, have you?

A. Yes, sir.

Q. Now, did you visit Johnnie at the hospital in this city?

A. Yes, sir.

Q. About what time, please?

A. It was some time in August.

Q. What was his condition at that time, his mental condition?

A. Clear.

Q. Did you have any talk with him about this injury?

A. Yes, sir.

Q. What did he tell you as to how it happened?

A. He said he didn't know how it happened.

Q. Did he make any statement to you as to who was to blame for it?

A. Yes, sir.

Mr. RICHARDSON: May it please the Court, I believe I will object to counsel leading this witness. I prefer to have him let the witness tell what the conversation was without him suggesting it, your Honor.

COURT: He is only calling attention to that matter, and then he will let her tell it in her own way. The witness can answer whether he made any statement to her.

Q. Did he make any statement to you regarding how this accident occurred?

A. We were talking it over.

Q. What did he say to you?

A. I asked him how it happened, and he said he did not know; he could not tell me how it happened. And I asked him who could have been to blame for it, and he said no one but himself.

Q. About what time of August was that, Mrs. Gray?

A. Well, I really couldn't tell you. I came to Portland the 12th of August to be treated for my hand, and I was here a number of days, and I don't know just what day it was.

Cross Examination.

Questions by Mr. RICHARDSON:

Mrs. Gray, your daughter and son in law are working for Mr. Betts, aren't they now?

A. Yes, sir.

(Witness excused.)

ROBERT M. BETTS, a witness called on behalf

of the defendant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. SMITH:

Where do you reside, Mr. Betts?

A. At Cornucopia.

Q. Are you a citizen of the United States?

A. Yes, sir.

Q. Native born?

A. Yes, sir.

Q. And a resident and citizen and inhabitant of the State of Oregon, are you?

A. Yes, sir.

Q. You are the man who is named as defendant by being receiver of the Cornucopia Mines?

A. Yes, sir.

Q. Mr. Betts, do you remember of Harry Harbert going to work up there on this line, about the time?

A. Yes, I remember when he went to work.

Q. Tell what you did, if anything, in relation to offering him, or telling him of rubber gloves.

A. Why, the change of insulators was contemplated, and about the time that we were ready to put them on, I asked Mr. Harbert if he wanted any rubber gloves, or any protection, and he said no, that he never used rubber gloves. And that is all there was to it.

Q. You know Johnnie Bisher, don't you?

A. Yes, sir.

Q. How long have you known Johnnie?

A. About three years.

Q. Did you know of his working there, or attempting to do anything with this line of work?

A. No, sir.

Q. Now, at the time of this injury, you were operating the mines there, were you?

A. Yes, sir.

Q. In what capacity?

A. As lessee.

Q. I will show you this document, dated the 1st day of November, 1911—

COURT: Is that the 1st day of November? I think the answer says the 9th.

Mr. SMITH: The certificate of acknowledgement is the 9th. The certificate is dated the 1st.

A. It was signed on the 9th.

Q. The certificate is the 9th. I didn't notice that before. This lease dated the 1st day of November, 1911, and acknowledged on the 9th day by Mr. Thomas, the lease being signed by the Cornucopia Mines Company, by Joseph B. Thomas, President, and Robert M. Betts—You signed it?

A. Yes, sir.

Mr. RICHARDSON: May it please the Court, I object to counsel reading that. I want him to finish his question. Then I will make my objection to its admission.

Mr. SMITH: I haven't offered it yet.

Q. The lease being executed by the Cornucopia

Mines Company by Joseph B. Thomas, President, attested by Ina W. Hunter, Secretary, and also signed by you. You are the same person named in this lease?

A. Yes.

Mr. SMITH: We will offer the lease in evidence. I will not try to read the lease until it is admitted, but I will also direct his attention to the recording certificate on the back. You had it recorded, did you?

A. Yes, sir.

Mr. SMITH: We will offer the lease, together with the date of recording, as appears from the endorsement on it.

Mr. RICHARDSON: Now, may it please the Court, I object to that as incompetent, and particularly as immaterial, for the reason that by the records of this Court, it cannot be used as a defense in this action. In this court on the 21st day of December, 1911, and by admissions of the defendant that he is the receiver, this order was entered: "Now, on this 21st day of December, 1911, comes the complainant, The Hamilton Trust Company, by Williams, Wood and Linthicum, its solicitors, and it appearing that respondent, the Cornucopia Mines Company of Oregon, and respondent Valentine Laubenheimer, have been regularly served with the order, to show cause herein, and it appearing that respondent S. W. Holmes has very little interest herein, and that the application for a receiver herein is not resisted by any of said respondents, and the Court having been fully advised in the premises.

It is now hereby ORDERED, ADJUDGED AND DECREED that Robert M. Betts be, and he hereby is appointed receiver of all and singular the real and personal property of the said the Cornucopia Mines Company of Oregon, covered by the mortgage sought to be foreclosed herein, and that said receiver be, and he hereby is, authorized and directed to take immediate possession of all and singular the said real and personal property, wherever situated or found, and to continue the operation of said mining and other property, and every part and portion thereof, as heretofore operated, and to preserve the said property in proper condition and keep the same in repair, and to employ such persons and make such payments and disbursements as may be needful and proper in doing so. It is further ordered that said Receiver, within the next ten days, file with the clerk of this court, a proper bond," which bond was properly executed and signed. And in connection with that is an affidavit made by Colonel Callahan that it was necessary that the Receiver operate this property, and the Receiver was operating this property on the 28th day of July, 1912, and has made his reports to this court. Judge Bean, your Honor, made these orders, and here is the Judgment Roll.

COURT: This lease was made prior to the time the Receiver was appointed?

Mr. SMITH: Yes. It was made the 1st day of November, 1911, and executed the 9th.

COURT: When was the Receiver appointed?

A. The 21st of December.

Mr. CALLAHAN: The Receiver was appointed December 21, 1911.

Mr. SMITH: The lease was both executed and recorded long prior to that time, when Mr. Betts was not a party to the proceeding.

(Argument.)

COURT: The receiver has reported that he has made certain expenditures, and he has also shown that he has received certain moneys from the mine, so that the expenditure would be set off against what he received. Now, then, were those expenses that he has returned as having expended on account of this mine, were those expenditures incident to keeping up this electric plant and keeping up the expenses touching the running of the plant?

Mr. CALLAHAN: Yes.

Mr. BETTS: We have to run the plant to run the mine.

COURT: Wouldn't that be part of the business as lessee?

Mr. BETTS: Yes.

COURT: Then why did you report that as an expense to the Receiver, to your operation of the mine as Receiver?

Mr. CALLAHAN: The lease requires him to account to the Cornucopia Mines Company and pay them a royalty of ninety per cent of the proceeds.

COURT: I will admit this lease and dispose of the other question afterwards. It might be necessary to

submit that question to the jury to determine whether they were operating under this lease, or under the Receivership.

Mr. SMITH: We will offer the lease in evidence, together with the endorsement of recording.

Mr. RICHARDSON: We will save our exception. Marked "Defendant's Exhibit G."

Mr. SMITH: I presume counsel will agree to waive the reading of the lease at this time. I can read it later.

Q. I will show you this document marked for identification "Defendant's Exhibit A," the one which Johnnie Bisher admits he signed. That is one of the documents you received, is it, Mr. Betts?

A. Yes, sir.

Q. For what period is that a receipt of labor?

A. That is for the month of July.

Mr. SMITH: We will offer in evidence this document, if your Honor please.

COURT: Do you object to that?

Mr. RICHARDSON: May it please the Court, we object to this upon the same grounds that we objected to the other, as being incompetent and irrelevant, as the records of this court show that he was operating that plant at that time as receiver of the Cornucopia Mines Company of Oregon.

COURT: Your objection will be overruled, and you may have your exception.

Marked "Defendant's Exhibit A."

Mr. BOOTHE: What part of this are you offer-

ing?

Mr. SMITH: I am offering the whole document just as it is. It seems to be attached. I do not know what that first paper is. The second paper is the one I am after—the one underneath. I don't care anything about this first top paper, but I don't want to detach it.

Mr. BOOTHE: That has nothing to do with this case.

Mr. RICHARDSON: This says "The Cornucopia Mines Co., of Oregon, to Mills, Bisher, Smith & Mills." "Robert M. Betts, Lessee" stamped in there. No signature, but stamped.

COURT: I understood the boy admitted his signature to that.

Mr. RICHARDSON: He admitted that was his signature, but he didn't admit that there was any "lessee" on there, your Honor. He denies that that was on there when he signed his name.

COURT: The jury heard that.

Mr. SMITH: He didn't deny it was on there. He says he didn't see it.

Q. Now, I will ask you, Mr. Betts, at the time that was signed, if that stamp was on there—"Robert M Betts, Lessee"?

A. Yes, sir.

Q. Why did the boy sign up on the body of that instead of up here?

A. Because there were too many of them to sign on this one line. It is merely a matter of record.

Mr. SMITH: The document down here says "Robert M. Betts, Lessee", instead of the Cornucopia Mines Company, and it is headed "To Mills, Bisher, Smith & Mills, of Cornucopia, Ore. Contract for sacking concentrate & slimes." So many sacks, so much money—carrying it out.

The date is "Received July 15, 1912," and the boy signed up there instead of down here because there wasn't room—thirteen days before the injury.

Q. Now, after you got this lease, Mr. Betts, dated November 1st and recorded the 28th of November, 1911, at 10:30 o'clock, who was in possession of that mine from the first day of November on?

A. I was.

Q. In what capacity?

A. As lessee.

Q. Were you operating it at the time you were appointed Receiver?

A. Yes, sir.

Q. In what capacity were you operating it?

A. As lessee.

Q. You operated until your lease expired, did you?

A. Yes, sir.

Q. As lessee?

A. Yes, sir.

COURT: What is the consideration for the lease, Mr. Smith?

Mr. SMITH: My recollection is it is a royalty. He is to pay so much of the proceeds. Therefore he accounted right along and showed his expenses. Here

are several pages of description of property, "And in consideration of such demise, the said lessee doth covenant and agree with said lessor as follows, to-wit:" (Page 6 of the lease).

"To not assign this lease or any interest thereunder, and not to sublet the said premises or any part thereof, without the written consent of said lessor, and not to allow any person or persons not in privity with the parties hereto, to take or hold possession of said premises, or any part thereof, under any circumstances or any pretense whatever.

"To allow said lessor and its agents at any time to enter upon and into all parts of said mines and premises for purposes of inspection, or for any other purpose whatsoever.

"To pay to said lessor as Royalty ninety per cent. of the net mill returns of all ore extracted or to be extracted from said mines; and said lessor is to have the sole and exclusive control and right to say to whom and how the ores extracted from said mines, and the concentrates therefrom, shall be disposed of, and said lessee will be directed solely and exclusively how said ores and concentrates shall be sold and disposed of.

"To well and sufficiently timber said mines at all points where proper, and work and develop said mines in accordance with good mining.

"To deliver to said lessor or its agent or agents, all the said described mines, material and premises in at least as good condition as the same are now in at the

date of this lease; and without demand or further notice of any kind or character said lessee must deliver said described mines and premises over to said lessor on the 1st day of November, 1912, at noon on said day, or any other day or time previous thereto, upon demand for violation of any provision or covenant contained in this lease, or for forfeiture thereof.

"Said lessee must promptly pay for all labor and supplies of every kind and character whatsoever furnished to said lessee by any person or persons under or in privity with him used in operating and working said mines and premises under this lease; and if said wages of miners and laborers and workmen, and said supplies used under this lease are not paid promptly when due from said lessee, then said lessor at its election may declare a forfeiture of this lease, and take possession of said mines and premises upon demand therefor, and immediately upon said demand being made with or without force, and with or without process of law, and may proceed against any person or persons that may be found in occupation thereof as guilty of unlawful detainer."

Q. I direct your attention to a report of the receiver, parts of which have been read, that was filed in this court August 30, 1912. After that date did you still operate the mine?

A. Yes, sir.

Q. In what capacity?

A. As lessee.

Mr. SMITH: Now, this is already in evidence, I

believe. (Referring to report).

Q. This is your signature to it, is it, Mr. Betts?

A. It is.

Mr. SMITH: At this time I wish to read to the jury that paragraph 3 of this report, and I will read any other that counsel wants me to.

Mr. RICHARDSON: You might read the whole report.

Mr. SMITH: All right. It was just to shorten the thing.

*"In the District Court of the United States for the
District of Oregon.*

The Hamilton Trust Company,

Complainant,

v.

Cornucopia Mines Co. et al,

Respondents.

To the Honorable Judges of the District Court of the
United States for the District of Oregon:

Robert M. Betts, respectfully submits his report as
Lessee and Receiver herein:

1. That said Robert M. Betts, was heretofore by an order of this Court duly appointed the receiver of the Cornucopia Mines Company of Oregon, a corporation, in the suit of the above named complainant in a mortgage foreclosure proceeding in this court.

2. That thereafter he duly qualified as such receiver in the above named suit and proceeding.

3. That during the said receivership of said Cornu-

copia Mines Company of Oregon as aforesaid he held and operated said Mines under a written lease with said Cornucopia Mines Co. from the first day of November, 1911 until the first day of November, 1912.

4. That hereby submits this his final report of the operation of said mines under said lease and receivership to this Court, said account showing that he received \$71,681.27 as receipts from ores, bullion and concentrates in the operation of said Mines of said respondent; that said account shows his total expenditures in the conduct and operation of said Mines, Stamp Mill, etc. in the sum of \$71,681.27, less a deficit of \$781.81. That he took proper signed vouchers for each and every item as set forth in the account attached hereto and made a part of this final report.

5. That he has examined each and every voucher and account of such expenditure, as shown by the vouchers, and finds the same correct and true.

6. That all the property of every kind and character real and personal, and all assets of Cornucopia Mines Company of Oregon, Respondent, were sold under a decree and order of this Court on the 29th day of June, 1912, by Ed Rand, the Special Master of the District Court of the United States for the District of Oregon, who was theretofore appointed by this Court as such special master, and before said sale as aforesaid he duly qualified as such special master; that at such masters sale as aforesaid, said property real and personal was sold to C. E. S. Wood, as trustee by said Ed Rand, as special Master of this Court, and

said sale was afterwards by this court duly confirmed.

7. That there is no other property real or personal of said Cornucopia Mines Company of Oregon, respondent unsold or remaining to be administrated upon by said receiver.

WHEREFORE, said Robert M. Betts, as such receiver prays this court to approve said final accounting and settle same; that upon the settlement of said account that said receiver be discharged as such receiver, and his bond exonerated.

Respectfully submitted,

Robert M. Betts."

Q. Now, when you operated that mine, did you keep an account or keep a record of your expenditures for each month?

A. Yes, sir.

Q. I will ask you to look at these documents and see if they are the records that you kept, the extended records and reports?

A. They are.

Q. I notice on the top of each one there is stamped "Robert M. Betts, Lessee." When was that put on there, Mr. Betts?

A. Why, it was put on at the time the vouchers were made out. Some of them are put on with the typewriter. The bookkeeper sometimes put them on with the typewriter and sometimes stamped them.

Mr. SMITH: To save time, I will just ask him the question, or if you wish to prove it by the document, I will show it to you.

Q. But do these documents, as lessee, show you the time of Johnnie Bisher? Does it show his working time?

A. Yes, sir, they should.

Q. Will you find one that does, if you can?

Mr. CALLAHAN: The first one.

Q. Colonel Callahan says the first one, Mr. Betts.

A. Yes.

Q. Have you the report there that shows it?

A. Yes, sir.

Q. Will you kindly read the item? Just read it out loud so the jury can hear it, please.

A. "John Bisher, Assistant Lineman, 9½ days at \$3.00 a day, \$28.50."

Q. That is on this single report, is it?

A. Yes, that is on this. Total \$28.50.

Q. Was that paid to him?

A. I am sure it was, yes, sir.

Q. This report is for the month of July, 1912?

COURT: Who signed that up when payment was made?

A. Mr. Buxton came up and got all the checks for the men working at the power plant, and he signed for them and took the checks down there.

COURT: Do you offer that in evidence, Mr. Smith?

Mr. SMITH: Yes.

Mr. RICHARDSON: I object to it on the ground it is incompetent, irrelevant and immaterial, not tending to substantiate any of the issues.

COURT: You offer that in connection with the court records?

Mr. SMITH: Yes, your Honor.

COURT: The objection will be overruled.

Mr. RICHARDSON: It is not a part of the court record.

Mr. SMITH: It is an exemplification of what he reported to the court.

Mr. RICHARDSON: This is not a part of the judgment roll.

COURT: Isn't this one of the vouchers, or is it?

A. It is one of the vouchers.

Mr. SMITH: This is a list of the expenditures that he made for a month. This is a compiled list from which he made the report, of course. This is the payroll itself.

Mr. RICHARDSON: But it has never been an exhibit in this other case. His vouchers were never filed with the clerk of this court in his receivership reports.

COURT: Haven't those been filed?

Mr. SMITH: That is the reason I am offering it now, to get it in evidence.

COURT: I will overrule the objection. You may save an exception.

Mr. BOOTHE: I believe it is understood that this paper that is being offered in evidence has never been filed with the court.

COURT: Yes, I understand.

Marked "Defendant's Exhibit H."

Q. What page was that he was paid? You say

Mr. Buxton signed it, Mr. Betts?

A. Yes, sir.

Q. On the second page of it?

A. Yes, sir, right here is a number of them. These men were working there.

JUROR: Which one is this?

A. John Bisher.

JUROR: Is the signature here of John Bisher the same as that of Harry Harbert, just above it, the same handwriting?

A. It is the same.

JUROR: Mr. Buxton did them both?

A. The mine is quite a ways above the power house.

Q. Mr. Buxton made that signature there. You don't claim that is Johnnie's signature?

A. No. Mr. Buxton took all the checks down to save the boys walking away up the hill to get the checks.

Q. Sometimes you would get the boys to sign, but this is sometimes signed for them? Is that it?

A. Yes, sometimes whoever happened to come up would get the checks and sign for them.

Q. But the signature on this Exhibit A is Johnnie Bisher's own signature?

A. He admitted it.

Q. The one dated July—

A. 15th.

Q. 15th, whatever it is?

A. Yes, sir.

Q. Did any one ever tell you, Mr. Betts, or did you know, that Johnnie Bisher was purporting to work up on a line like that?

A. No, I did not.

Q. You knew that he was a bright boy, and learning all he could, didn't you?

A. Yes, sir.

Q. Did you have materials there, or would you have furnished any man up there rubber gloves, if he had asked for them, or wanted them?

A. I would. I asked Harbert if he wanted them. He said no, that he would rather not use them.

Q. How long have you been connected with the Cornucopia Mines Company?

A. About four years and a half.

Q. During all that time was there ever any other man injured or hurt on that line, or wire?

A. No, sir.

Q. During that period did you maintain those wires in practically the same distance that they are on that cross-arm now?

A. The same distances, yes, sir, all the time.

Q. Did any man ever make complaint to you that there wasn't space enough there to work?

A. No, sir.

Q. I notice that this report that they talk about here is dated some time in August, 1912.

A. Yes, sir.

Q. I believe, to get it correct (referring to report) filed in this court August 30th. Now, after August,

who operated those mines, did the actual work there?

A. I did.

Q. Up to when?

A. Up until the first of November.

Q. That was the expiration of your lease, was it?

A. That was the expiration of my lease, yes, sir.

Q. I want to ask you a question. Counsel may object to it. I will then state to the Court what it is, and don't answer it unless the Court says you can. How long did you say you were connected with that mine up there?

A. Four years and a half.

Q. Do you know whether that company leased to other people within that four and a half years' period?

Mr. RICHARDSON: Just a moment. I object to that question.

COURT: What is that question.

Mr. SMITH: I was just asking him whether that company leased to other people, simply to show it was nothing uncommon for them to lease, and that there was no hocus pocus about this lease at all. They don't claim, as I understand, that there was.

COURT: During four years and a half prior to this lease?

Mr. SMITH: Yes, sir, showing they frequently operated, tried to operate through leases.

COURT: I don't think that would help this case.

Mr. SMITH: Very well. You may cross examine.

Cross Examination.

Questions by Mr. RICHARDSON:

Mr. Betts, you said, I believe, in your direct examination, that you asked Harry Harbert if he wanted rubber gloves?

A. Yes, sir.

Q. What did you ask him that question for?

A. Because I wanted to protect him as much as possible.

Q. You wanted to protect him from what?

A. From shock.

Q. From shock?

A. Yes, sir.

Q. How came you to suggest rubber gloves?

A. Why, because I thought it might help him. I knew that rubber gloves were made.

Q. You knew they had been used?

A. I knew they had been used, yes, sir.

Q. Did you have any?

A. No, sir.

Q. You didn't have any?

A. No, sir, never have had any there.

Q. Now, your report shows that Johnnie Bisher was assistant lineman, does it?

A. That is the way he appears on the payroll, yes, sir.

Q. Did you ask him if he wanted any rubber gloves, or needed any?

A. No, sir.

Q. You didn't?

A. No, sir.

Q. Why didn't you?

A. Because I had no idea that he was going on the pole.

Q. No idea he was going on the pole?

A. No, sir.

Q. Why didn't you think he was going on the pole, Mr. Betts?

A. Because Mr. Buxton said to me "I have a good man to change that pole line." I said, "Who is he?" He says, "It is a young man from the valley by the name of Harbert." I said, "That is good," and I thought that Mr. Harbert was going to fix that line.

Q. Did you offer to get anything else for Harry Harbert, Mr. Betts?

A. No, sir.

Q. You just happened to think of rubber gloves?

A. That is all I knew of.

Q. That is all you knew of?

A. Yes.

Q. You didn't know of any other device that would protect him, did you?

A. No, sir.

Q. You didn't say anything at the time about getting pliers with insulated handles, did you?

A. No, sir. I didn't know they made them.

Q. You didn't know they made them?

A. No, sir.

Q. How came you to know, Mr. Betts, that they made rubber gloves? Who told you about that?

A. Well, I cannot say how I happened to hear it. It is a matter of common knowledge. Almost any one

knows that rubber gloves are made.

Q. You heard the testimony of some of your witnesses, expert witnesses, didn't you—

A. Yes, sir.

Q. That they had never heard of them?

A. I didn't hear that.

Mr. SMITH: Of rubber gloves?

A. I didn't hear that testimony.

Mr. RICHARDSON: I was thinking that Mr. Myers or Mr. Hull said that.

Mr. SMITH: No. Mr. Myers said he had heard of everything except that sow-belly. He said he would like to see one of them.

Mr. RICHARDSON: Maybe it was a sow-belly. Very well.

Q. You just happened to think about these rubber gloves, Mr. Betts?

A. Yes, sir.

Q. You are not an electrician yourself, are you?

A. No, I am not.

Q. Just common knowledge that told you that that was a precaution?

A. Yes, sir. I had heard that it was a precaution.

Q. How did you know that Harry Harbert was working on the line?

A. I just said that Mr. Buxton told me that he had a good man to fix the line.

Q. And then did Harry Harbert come up to see you?

A. No, sir.

Q. Well, how came you to suggest to him about gloves, and where were you?

A. I rode down to the power plant.

Q. You rode down to the power plant?

A. Yes.

Q. Who was there, Mr. Betts?

A. Mr. Harbert, and I think Mr. Buxton.

Q. Anybody else?

A. Not that I remember of.

Q. Was this before Harry Harbert started to work on the line?

A. Yes, sir, a number of days before.

Q. A number of days before?

A. Yes, sir.

Q. You didn't tell him, or did Mr. Buxton suggest that he was going to have an assistant for him?

A. No, he did not.

Q. You didn't know that the laws of the State of Oregon required you to have your wires insulated, did you, Mr. Betts?

Mr. SMITH: Objected to as incompetent, irrelevant and immaterial. Ignorance of the law is no excuse for anybody. If it requires it, it does; if it doesn't, it don't. It is for the Court to say. It is immaterial whether he knew it or not. Men have been hung when they didn't know what the law was.

COURT: You may answer the question.

A. I did not.

Examination by the Court.

Q. At the time of this accident, was this power

plant being operated in connection with the mine?

A. Yes, sir.

Q. Was it used for any other purpose besides the operation of the mine?

A. No, sir.

Q. Entirely for that purpose?

A. Entirely for that purpose, yes, sir.

Cross Examination Resumed.

Q. Mr. Betts, is that your signature?

A. It is.

Q. You read that, didn't you?

A. Yes, sir.

Q. And what it contains is true, is it?

A. To the best of my knowledge, it is.

Mr. SMITH: Mr. Richardson, will you kindly identify the paper in the record, so we may know what paper it is.

Mr. RICHARDSON: Counsel handing to witness his report as receiver and lessee.

Mr. SMITH: It is the one that was already read at length, is it, so we can get it straight?

Mr. RICHARDSON: I will read the report in full.

COURT: Is that the one that has been read?

Mr. SMITH: It is already read. I read it to the jury at your request.

COURT: Then it is not necessary to read it again.

Q. Mr. Betts, you state in this report that you submit this report of the operation of said mines under said lease and receivership to this Court. Section 3,

you stated "that during the said receivership of said Cornucopia Mines Company of Oregon as aforesaid, he held and operated said mines under a written lease with said Cornucopia Mines Company." That he submits this, his final report of the operation of said mines under said lease and receivership to this Court, said account showing that he received \$71,681.27 as receipts from ores, bullion and concentrates in the operation of said mines of said respondent." That is true, is it, Mr. Betts?

A. Yes, sir.

Q. "That said account shows his total expenditures in the conduct and operation of said mines, stamp mill, etc., in the sum of \$71,681.27, less a deficit of \$781.81. That he took proper signed vouchers for each and every item as set forth in the account attached hereto and made a part of this final report." Now, Mr. Betts, this says the report of the receiver of the Cornucopia Mines Company of Oregon.

A. Yes, sir.

Q. Is that the report of the receiver of the Cornucopia Mines Company of Oregon?

A. Yes, sir.

Q. It is?

A. Yes, sir.

Q. Have you that voucher 583 there, Mr. Betts, or could you tell me from memory what the expenditure of \$4,015.70 was for?

Mr. SMITH: That is objected to. I think if the Court please, that would be perfectly proper when you

come to consider the final report as such. I cannot see what bearing it can have on this case.

COURT: That is on the theory of whether this amount was expended by the receiver or the lessee.

Mr. SMITH: I have no objection, if your Honor wants to hear any part of it.

COURT: I will overrule the objection. Go ahead.

Mr. SMITH: I will withdraw the objection, if the Court please.

Mr. RICHARDSON: It says on it there, Report of the Receiver of the Cornucopia Mines Company of Oregon. I don't think I will care to go into it, because the record itself shows it. I will withdraw that question.

COURT: Very well.

Q. Why did you make any reports to the Court? What did you make this report for?

A. Because I was instructed to by the Court.

Q. You were instructed to operate that plant, too, weren't you?

Mr. SMITH: We object to that, if the Court please. That is wholly immaterial.

COURT: This is cross examination. I will permit him to answer.

A. As I understand the order, I was to take possession—

Q. Of the plant?

A. Of the mine and the plant; the mine and the property.

Q. You obeyed the order of the Court, did you?

A. Yes, sir.

Q. You had possession on the 28th day of July, 1912, didn't you?

A. Yes, sir.

Q. You took possession upon the order of the court, didn't you?

A. Yes.

Q. The court ordered you to take possession, didn't it?

A. Yes.

Q. And you took possession?

A. I was already in possession.

Q. Well, why did you make any report to the court then?

A. Because I was instructed to. Is it all right for me to state the way I thought about it?

Q. Yes.

A. I had never been receiver before, and as I understood it, I was receiver for the company, but my receivership did not abrogate my lease, and the company had a certain royalty, had a certain payment coming. If the mine paid, they were to get a certain percentage, and I made the receiver's report, the report as receiver, and also it showed the money received during the time I was receiver, the money received during that time.

COURT: Received from what?

A. Received from the operation of the mine, from the mining end of it, bullion and concentrates.

COURT: All the bullion mined, or the royalties

only?

A. No, the whole thing, showing the total receipts from the mine.

COURT: That included the royalty and the ten per cent additional?

A. Yes, sir.

COURT: So that it included all the product of the mine.

A. It included everything, yes, sir.

COURT: And you received that as receiver?

A. Yes, sir.

Q. That is, you took account of it as receiver?

A. Yes, sir.

Mr. SMITH: The Court will understand that he just made a statement to show how it was. The mine was operated at a loss. As lessee, he lost money.

COURT: Yes, I understand. The lease provides that 90 per cent of the product of the mine shall go to the Cornucopia Mines Company, or the receiver, and I was getting at what he did.

Mr. SMITH: Yes, your Honor.

Q. Now, I see in this receipt that you received from bullion and concentrates \$11,662.96 in the month of January. That is correct, is it, Mr. Betts?

A. I think it is, yes, sir.

Q. And you received from bullion and concentrates, and that is the store, is it, trading company?

A. Cornucopia Trading Company.

Q. \$5,962.25 in the month of February, 1912, didn't you?

A. Yes, sir.

Q. And you received in the month of March, 1912, from bullion and concentrates—just bullion and concentrates?

A. Yes, sir.

Q. \$13,421.47, didn't you, Mr. Betts?

A. Yes, sir.

Q. Now, you received in April, 1912, from bullion, concentrates and Trading Company, and Standard Oil Company the amount of \$5,478.05, didn't you?

A. Yes, sir.

Q. You received in May 1912, from bullion and concentrates and S. & F.—what is that?

A. S. & F. Forwarding Company, it says, forwarding account with the Railroad Company.

Q. Coffenberry and Witten—you received that month \$8,709.32, didn't you, Mr. Betts?

A. Yes, sir.

Q. In the month of June, Mr. Betts, you received from bullion and concentrates and the store \$11,-386.65, didn't you?

A. Yes, sir.

Q. Now, in the month of July, 1912, the month in which the boy was injured, you received from Ross, concentrates, and yourself \$2100.—what was that \$2100? Did you advance that \$2100? What was that for, Mr. Betts?

A. Why, I was receiving no compensation as receiver, and as lessee I would credit my—

Q. Receiver account?

A. No, I would take money out of the—

Q. Receiver's fund?

A. No.

Q. Whom did you take money from?

A. I say, as lessee—I will get this straight.

Mr. SMITH: I think the witness has a right to answer the question. If he doesn't answer it counsel's way, if it is the truth, it is just the same.

COURT: Yes.

A. As lessee, I would take money as I needed it for my personal expenses, and the bookkeeper didn't understand—made a mistake—and I kept two sets of books, you understand, one as receiver and one as lessee, and he took money out of the receiver—well, let me see. I don't know how to make that plain.

Q. This is copied from your receiver accounts, isn't it? This is the receivership books, isn't it?

A. Yes, sir.

Q. This is copied from the receivership books?

A. Yes. And this amount was wrongly charged. It should have gone onto the lessee books, so when it was discovered, we credited the receiver account with that much money which had been drawn out.

Q. Well now, Mr. Betts, there is several thousand dollars—one hundred dollars, and \$3500., and \$455, and \$1,000 and \$3,078. in concentrates. Where did you get those concentrates?

A. Mining.

Q. You got them from operating the mine?

A. Yes, sir.

Q. Have you got Voucher 785 there? Let me see Voucher 785, Mr. Betts.

A. Will you state who it is from, or identify it.

Q. Just let me see it. Can you get it out?

A. It doesn't seem to show. 758—764—

Q. 785.

A. I don't see it here at this time.

Q. You think it is there, though?

A. It should be here. It accompanied the report.

Mr. RICHARDSON: Well leave those (vouchers) with the clerk or stenographer. I want to refer to those later on, your Honor.

COURT: Very well.

Redirect Examination.

Q. In these reports you show up the entire operation there, don't you?

A. I do.

Q. Receipts from all sources and all expenditures?

A. Yes, sir.

Q. Then there were no royalties at all—didn't make any?

A. No. No.

Mr. RICHARDSON: Now, if it please the Court, if the witness was a young and unsophisticated witness, I would not object to his leading his witness. I don't want him to lead this witness. I ask the Court to caution counsel not to ask these leading questions.

COURT: Don't ask leading questions.

Q. Did you make any money down there?

A. No, sir.

Mr. SMITH: Do you object to that?

Mr. RICHARDSON: No.

Q. Did you lose any money down there?

A. Yes, sir.

(Witness excused.)

Mr. RICHARDSON: I move, your Honor, to strike the question from the record for the reason it is incompetent and immaterial, has no tendency to prove or disprove any of the issues in this case, either to prove any of the defenses or disprove any of the allegations of the complaint.

COURT: It went in with your consent, expressed consent at the time.

Mr. RICHARDSON: Well, I let him answer it and then moved to strike it out.

Mr. SMITH: The object in asking it was to show that there was no royalty, that there were no net profits. That was my object in showing it, under the lease. That is all I think of now.

Mr. SMITH: I will recall Harry Harbert. It may be that counsel would concede what I wanted to show, which was that he was not a foreman over this Johnnie Bisher. All that he was there for was on the ground.

Mr. RICHARDSON: Not much, your Honor.

Mr. SMITH: All right, I will ask him the question.

Mr. RICHARDSON: I understood that that question has already been asked and answered by this

witness. He was asked time and again if he gave any orders to the plaintiff. He denied it. He denied giving any orders—that is, he denied it in words.

COURT: He has told his story from beginning to end—what Mr. Bisher did, and what he did, and what he did not do. I think he has covered that question enough.

Mr. SMITH: Very well, then. That is all, if the Court please. The defendant rests.

COURT: Any rebuttal?

Mr. RICHARDSON: Just one question to the plaintiff.

JOHN BISHER Jr., Recalled in rebuttal.

Direct Examination.

Questions by Mr. RICHARDSON:

Johnnie, you heard the testimony of Harry Harbert?

A. Yes, sir.

Q. In which he stated that you had only changed the insulators on eight poles at the time you were injured? Was that true?

A. No, sir.

Mr. SMITH: Just a moment. This is not rebuttal. They have his entire statement as to what he claims was done.

COURT: I will allow the question.

Mr. SMITH: Very well, may it please the Court. It is in your Honor's discretion.

COURT: What is the answer?

A. No, sir. We changed about twenty.

Q. Now, Johnnie, you heard the testimony of Mr. Buxton in regard to what you said when you were at the store after your injury?

COURT: Wasn't his attention called to that when he was on the stand in chief?

Mr. SMITH: Very particularly, if your Honor please.

Mr. RICHARDSON: I believe we did, your Honor.

Mr. SMITH: Also in the automobile and also at the hospital. I was very careful to call his attention to all of them.

Mr. RICHARDSON: Yes, that is right.

Q. Now, you heard, Johnnie, the statement made by Harry Harbert that it was not your duty to climb the pole, and he told you that you should not climb the pole, and that it was just your duty to carry the insulators along, and act as a groundman, or words to that effect. Was that true?

A. He told me to come up the pole.

Q. I know. You heard his testimony as to what he said, that you were not allowed to come up the pole?

A. Yes, sir. I remember it.

Q. Was that true?

A. No, sir.

Q. You heard his statement about your employment, and you also heard Mr. Buxton's statement that he did not show you how to tie a wire, and instructed

you that you should not climb any poles.

Mr. SMITH: Just a moment. That was particularly gone over in his direct examination.

COURT: He testified in his examination in chief, if I remember right, that Buxton did tell him how to tie he wire.

Mr. RICHARDSON: Yes, I think that is right. I believe that is all, your Honor. I believe he has practically denied on cross examination.

COURT: Do you want to cross examine?

Mr. SMITH: No. No cross examination.

(Witness excused.)

COURT: Is that all?

Mr. RICHARDSON: That is all, your Honor.

Mr. SMITH: Before proceeding, if your Honor please, to get the record, we desire to interpose a motion for a directed verdict. The defendant at this time asks the Court to instruct the Jury to return a verdict for the defendant upon the following grounds: First, the evidence shows that both plaintiff and defendant are residents, citizens and inhabitants of the State of Oregon, and this Court has no jurisdiction of the case. The bare fact that the defendant is sued as receiver in a court action, does not give this court jurisdiction where the diverse citizenship does not exist.

Second, the evidence conclusively shows that Robert M. Betts, Lessee, was operating this mine, and electrical plant at the time of the injury and not Robert M. Betts as Receiver, and that by reason of the

sale of the property, the duties of the receiver had terminated.

Third, That the evidence fails to disclose any proximate cause for the injury other than the negligence of the plaintiff himself. There is no negligence of the master which is shown to have contributed in any way to the injury.

Fourth, The testimony shows that the plaintiff was a volunteer, that the master owed him no duty; that his duties did not require him to be on the pole, or among the wires; that the master did not know that he was among the wires, or on the pole, or was attempting in any way to discharge duties thereon.

Fifth, The evidence shows that the injury was occasioned solely by the negligence of the plaintiff.

COURT: The Court will overrule the motion.

Mr. SMITH: We will note an exception on the several grounds separately, if the Court please.

COURT: Very well.

During the course of Mr. Richardson's argument the following occurred:

Mr. RICHARDSON: Now, gentlemen, what about Mr. Betts. When we had Mr. Betts, this lessee Betts—lessee Betts on the witness stand, that he likes to be called. That is the title that he wants to be called. When he was on the witness stand, I asked Mr. Betts, I says, "Mr. Betts, what about these rubber gloves?" First I asked him if he was an electrician. "No." "How came you to suggest to Harry Harbert that you would give him rubber gloves? Did

you have any there?" "No." "How came you to suggest it?" "Well, I just naturally thought about it. It just naturally kind 'of occurred to me that maybe he might want them." Now, gentlemen, there is a man that is not an electrician, a man that is not versed in the proper devices that an electric lineman needs, by his own admissions, and still he would come in here and he would have you believe from that witness stand that he was the one that suggested about rubber gloves. Gentlemen, I will tell you, that will not hold water. That does not appeal to a man of real common ordinary intelligence as being something that a man like Betts would think. It looks like it must be a lawsuit, gentlemen, that suggested that, or an injury that suggested that. It looks like the same thought suggested that to him that suggested that he was all of a sudden, instead of being a receiver of the Cornucopia Mines Company, he was a lessee.

MR. SMITH: We except to the remarks of counsel, and assign them as error.

MR. RICHARDSON: Your Honor, I did not make very many interruptions, and I am drawing inferences. The jury knows that I am not stating these as facts.

COURT: I will overrule the motion. You may save an exception.

[Instructions.]

Gentlemen of the Jury:

' This is an action brought on the part of John L.

Bisher, as guardian ad litem of John L. Bisher, Jr., and it is to recover for what injuries the boy has suffered on account of this accident. The action is brought against Robert M. Betts, as the receiver of the Cornucopia Mines Company. The action is based upon negligence of the defendant as receiver. It is alleged, among other things, that the defendant as receiver, was engaged in the transmission of electricity over wires, three copper wires, from the place where the electricity was generated to the Cornucopia Mines Company for use at the plant. It is described that these lines were stretched upon poles about 25 feet from the ground; that they were three in number; and that there was also stretched upon these poles a line about seven feet below the copper wires.

Now, there are several grounds of negligence which the plaintiff alleges, and the plaintiff must recover upon the grounds of negligence alleged. He cannot recover upon any grounds outside of that, if any exist, but you must confine your examination to the grounds alleged in the complaint.

It is first alleged that the defendant was negligent in failing to insulate the transmission wires at the poles and arms upon which they rested; and,

Second, that in stringing the wires the defendant was negligent in stringing the wires too close to the poles and supports, so that it would not admit of workmen working safely between the wires, or between the poles and the wires; and, incidentally, it may be said that they claim that the wires were strung

too close together.

Third, in mingling a dead wire with live wires. This has reference to the wire which was strung seven feet below the copper wires.

Fourth, in failing to designate the arms and supports by colors or otherwise, so that they might be seen and recognized at once.

Fifth, in failing to use care and precaution to protect employees; that is, in supplying them with tools and implements, and in giving proper instructions about their work.

Sixth, in directing the workmen to carry on their work in a dangerous place, knowing them to be ignorant of the danger.

Seventh, in directing the workmen to climb the poles without furnishing them with ladders or other appliances for the purpose.

Eighth, in failing to turn off the electricity while the work was being carried on on the poles.

Now, these are the several acts of negligence which the plaintiff has alleged, and which he relies upon for recovery in this case.

The defense denies that Bisher was employed by Betts as receiver, but they allege that he was employed by Btts as the lessee of these mines. And they further allege that Bisher was employed to do work upon the ground, in carrying tools and implements, and not to work upon the poles. And then it is further alleged that the defendant used due care and precaution in construction, and in providing for the

safety of the workmen; that is, in constructing the lines and in doing that in such a way that workmen might go up on the poles and work with safety to themselves. And it is further alleged as a defense that Bisher ascended the pole outside of his duties, and that his act in that respect was voluntary. In other words, they allege that Bisher's duty or his employment, under his instructions, was to work upon the ground in carrying the tools, and that under those instructions he was not to ascend the poles, or to do or perform any work about the wires in securing their insulation. And furthermore, it is alleged as a defense that the plaintiff assumed the risk of his own employment. And it is further alleged also that the act to which reference has been made here, which was adopted by the initiative, is unconstitutional, in that it deprives the defendant of the right to set up contributory negligence.

Such being the issues, you will proceed to find, first, whether young Bisher was in the employ of Betts as receiver, or whether he was in the employ of Betts as lessee. This is made a direct issue in the case, and it is for you to determine that issue. It is admitted that Betts was appointed receiver. This is admitted by defendants themselves; and that he continued to be receiver until after this accident transpired, and is now receiver. On the other hand, they say that Betts was the lessee of these mines, and was working in that capacity at the time this accident happened. The lease has been offered in evidence, and you have it

before you, gentlemen of the jury. It bears date, I think, acknowledged on the 9th day of November, 1911. It is also shown to you by the record which has been offered in evidence here, that the suit was commenced subsequent to the time that this lease was executed and to the time that Betts was constituted lessee of these mines; and also that the receiver was appointed subsequent to that time, and that he took charge as receiver subsequent to that time. Now, these two positions are not inconsistent. Betts could act as the lessee of this mine and also act as the receiver of this mine without one duty being inconsistent with the other. That is to say, if appointed receiver, he would take charge of the mine as receiver, to be operated or to be conducted, or the estate to be closed up subject to the leasehold estate in the premises. Now, it is for you to determine, and I will submit that question to you as a matter of fact, whether or not Betts, at the time this accident occurred, was acting in the capacity of a receiver. If he was, then the negligence, if negligent at all, would be attributed to him. Or whether Betts was acting as lessee. If he was acting as lessee at the time this transaction occurred, or this accident happened, then he would not be responsible. And this fact you must determine from the record which has been offered in evidence here, from what was done in the record, and the returns that have been made, and what Betts reported as having done in the premises, and determine from that record whether or not Betts was acting at the

time this accident happened as receiver of these mines, or whether or not he was acting in the operation of the mines as a lessee of the mines.

If you find that he was acting as receiver, then you will proceed to a further examination, and find whether or not the defendant has been guilty of negligence in some one or more of the particulars specified in the complaint. You must keep in mind, gentlemen of the jury, that the act of negligence must be an act which contributes proximately to the injury itself. An act that did not contribute to the injury could not be held as against the defendant in this case. I will refer to one circumstance to illustrate the matter to you. It is alleged here as one of the specifications of negligence that the defendant was negligent in constructing the dead wire on these poles, and that wire, as I have indicated to you and as the evidence shows, was constructed on the poles seven feet below the copper wires. Now, that act of constructing the dead wire must be an act that would contribute proximately, or would constitute the proximate cause of the injury. If it is not, then that cannot be considered by you in this case. And I refer to that only as an illustration which will apply to all the other specifications of the negligence of the defendant. What we mean by a proximate cause is that cause which contributes directly to the injury. It must be the potent force which directly produces the result.

Now, negligence, gentlemen of the jury, may be defined shortly as the doing of some act or thing which

a reasonably prudent person would not do under the circumstances and conditions then existing, or the leaving undone of some act or thing which a reasonably prudent person would have done under like circumstances and conditions.

Now, the employer owes certain duties to his employees. The employer is never an insurer against accident, but he must use ordinary care and precaution to see that the employee is furnished with safe tools and implements with which to work, and a safe place in which to work. The care which a person is required to observe is such care and prudence as an ordinarily careful and prudent man would exercise in the occupation in which the person is employed. I will say to you, however, that where a person is engaged in a highly dangerous occupation, such as the transmission of an electric fluid or electric energy, he must use not only ordinary care, but the highest or utmost care in seeing that the employee is protected from injury.

Now, I will call your attention to the statute in this case, and make such remarks with reference to it as I deem pertinent. The statute requires that all persons engaged in the erection or operation of any machinery, or in the "manufacture, transmission, and use of electricity, or in the manufacture or use of any dangerous appliance or substance, shall see that all metal, wood, rope, glass, rubber, gutta percha, or other material whatever, shall be carefully selected and inspected and tested, so as to detect any defects:

* * and in the transmission and use of electricity of a dangerous voltage full and complete insulation shall be provided at all points where the public or the employees of the owner, contractor, or subcontractor transmitting or using said electricity are liable to come in contact with the wire, and dead wires shall not be mingled with live wires, nor strung upon the same support, and the arms or supports bearing live wires shall be especially designated by a color or other designation which is instantly apparent, and live electrical wires carrying a dangerous voltage shall be strung at such distance from the poles or supports as to permit repairmen to freely engage in their work without danger of shock; and, generally, all owners, contractors, or subcontractors, and other persons having charge of, or responsible for, any work involving a risk or danger to the employees or the public, shall use every device, care and precaution which it is practicable to use for the protection and safety of life and limb, limited only by the necessity for preserving the efficiency of the structure, machine, or other apparatus or device, and without regard to the additional cost of suitable material or safety appliance and devices."

This statute is intended to be an operative statute, and was intended also to permit persons to operate in certain occupations, or in the occupation, we might say by specifying the transmission of electric energy. It was not designed by the statute to compel persons to go out of the business, but it was designed to pro-

tect persons or employees where the occupation is being carried on. And hence we might say in this case that the requirements of the statute were not designed to kill the business of the persons engaged in the transmission of electric energy, and you must give the statute, or the court must, such reasonable construction as will permit people to go on with the work. And if it appears that the requirement of the statute will absolutely prevent people from operating any electric energy, why then we must give the statute such reasonable construction as will permit persons to go on with the work. And in this connection I will give you an instruction which is asked by one of the parties:

“If you believe from the evidence that it was not practicable for the employer to insulate the wires at the place of the happening of the injury, and if you further believe that the weather insulation spoken of was not practicable to use at that place, then I instruct you that the law does not require a vain or useless thing to be done. All statutes must be read and construed and applied to human affairs by the rule of reason, and the duties which are imposed upon masters by what is known as the Employers’ Liability Law of Oregon are such duties and obligations as can be performed reasonably and efficiently, and no obligation is laid upon the master to place upon his business an expense in furnishing appliances which are prohibitory either by the extreme cost or frequent renewals, which by the frequency of the renewal of such

appliances would compel the employer to close his enterprise. If you therefore believe that it was not practicable for the employer to insulate the wires and keep them insulated as against shock at the place of the injury, then I instruct you, as a matter of law, that it was not the duty of the employer to attempt to insulate the wires with weather insulation and you cannot consider his failure to so insulate the wires and keep them insulated as negligence."

You must take into consideration in this connection, gentlemen of the jury, whether or not the defendant could have insulated these wires as required by the statute and still continued his business. If it was too expensive to do that—if the expense laid upon the business by the insulation was such that the party must go out of business, or that it would render his occupation unprofitable so that he could not operate, then you must determine from all the facts in the case whether or not he used due care and precaution—the utmost care and precaution, you might say in this case—in doing what he did do in the premises in the placing of these wires and leaving them uninsulated.

You will determine further than this whether or not the defendant here used due care and precaution, such as I have defined to you that defendant must use in this case, in placing the wires upon the supports, the kind of support that was provided, and the distance the wires were placed from the supports, and the distance the wires were placed apart one from the other, and determine whether or not the defendant

has used ordinary and due care, such care as is required when engaging in the transmission of this dangerous agency by a person who would exercise such care for the protection of his workmen.

It is furthermore insisted that the defendant did not furnish the appliances that he should have provided in the present case. I refer to the furnishing of rubber gloves and pliers, and the body protectors that have been referred to in the testimony. It is the duty of the employer, as I have indicated before, to furnish proper appliances for use by the employees looking to their protection, and in this case there has been a good deal said about the rubber gloves, and about the defendant not having furnished rubber gloves when he ought to have furnished them. I will give you an instruction as follows:

“As to rubber gloves, I instruct you that if you believe from the evidence that the nature or character of the work in question was such that rubber gloves were not an essential requisite, then failure to furnish them would not be negligence.”

Now, if you find, gentlemen of the jury, that the defendant was acting as receiver when this accident happened, and if you find further that he was negligent in one or more of the particulars which have been enumerated and specified in the complaint, then you will pass to the defenses, and find, first, whether Bisher was a volunteer in doing what he did which resulted in his injury. It is claimed that he climbed the pole and attempted to assist in readjusting these

wires voluntarily, and without the direction of any one. I will instruct you, gentlemen of the jury, if his duties as assigned him by his employer were to work upon the ground alone, and not to ascend the pole, and if he voluntarily ascended the pole and attempted to engage in the work there, then he would be a volunteer in the premises, and the defendant would not be liable for his injuries. But in considering this matter, you must take into consideration who gave instructions with reference to the work of young Bisher. It is said in the testimony that Mills, being the foreman or the superintendent, desired to employ young Bisher, and that he sent him to Buxton, and that Buxton had authority in the premises, which is not denied. Then Buxton directed him to work with Harbert, and in that relation you will determine whether or not Harbert had any authority in the premises, whether or not he had authority to direct young Bisher what to do, and whether or not he had authority to direct young Bisher to go up these poles and to assist in the fixing of these wires. If he had such authority, why, then his authority would be binding upon the defendant in the case, and if he directed young Bisher to do what he did do, and the accident happened through the negligence of the defendant, or by reason of any of the acts of negligence alleged, then the defendant would be responsible for it.

Now, there are some instructions I will give you in this relation :

“If you believe from the evidence that Johnnie

Bisher, at the time he was injured, was on the pole and was not in the discharge of any duty imposed upon him, or if he was on the pole in a furtherance of his own learning or enlightenment, and his duties did not require him to go up on the pole or among the wires, then he is what is known in law as a volunteer and he cannot recover in this case and your verdict must be for the defendant."

And again:

You are instructed that no person can recover damages from another for injuries inflicted by himself. If, therefore, you believe from the evidence that at the time of the injury Johnnie Bisher received the same while doing an act which his duties did not require, or in any other way than through the negligence of his employer, then I instruct you that he cannot recover in this action, and your verdict should be for the defendant.

And, further:

"I instruct you that the evidence shows that Johnnie Bisher knew the current was on these wires, also the volume of voltage and that said wires were alive, and if you believe that his duties as supply boy did not require him to work among the wires or on the poles, but that he was acting outside his duties as supply boy, then I instruct you that he assumed the risk of danger, and if he was injured outside the scope of his duties as supply boy then he assumed the risk of the injury and he cannot recover, and your verdict should be for the defendant.

I think I should instruct you a little further as to the statute in this case, so that you may understand fully the relations existing here. The statute provides furthermore, that in all actions brought to recover from an employer for injuries suffered by the employee, the employer is made responsible for "any defect in the structure, materials, works, plant, or machinery of which the employer or his agent could have had knowledge by the exercise of ordinary care; the neglect of any person engaged as superintendent, manager, foreman, or other person in charge or control of the works, plant, machinery, or appliances; the incompetence or negligence of any person in charge of or directing the particular work in which the employee was engaged at the time of the injury or death; the incompetence or negligence of any person to whose orders the employee was bound to conform and did conform and by reason of his having conformed there-to the injury or death resulted; the act of any fellow-servant done in obedience to the rules, instructions, or orders given by the employer or any other person who has authority to direct the doing of said act." This you will consider in connection with the question whether or not Harbert was a person authorized by the defendant to direct what Bisher should do, and whether or not he did direct him to assist in regulating these wires.

And you will next consider, gentlemen of the jury, whether Bisher assumed the risk of his employment. Now, the assumption of risk means simply that, where

one person enters into the employment of another for the doing of some dangerous work, if that person knows the work he is to enter upon and appreciates the danger, and notwithstanding that, if he still enters into the employment, in such a case he assumes the risk, and the pay that he receives is supposed to compensate him for the dangerous work which he is entering upon.

In this case you will consider also the immature years of the young man who was doing this work, or the plaintiff's ward. A boy of immature years is not supposed to have the same discretion as a person older than he, or having had greater experience; and you must determine in this case whether or not this boy acted, in entering upon this employment, as a boy of his years would act in the premises—not as a man of mature years would act, or what a man of mature years might appreciate and understand but what a boy of this age would appreciate and understand. In this relation, I will read an instruction for your guidance:

“You have a right to take into consideration the age and experience of the plaintiff as to his understanding and appreciation of the danger. In the case of minors, they sometimes understand but fail to appreciate danger. It has been determined by our courts that only such care and caution to avoid the dangers of accident can be expected or required of a person of immature age as is common to other persons of his years, of prudence, forethought

and discretion. This must necessarily be so because infancy and youth spring into manhood and maturity by degrees only and responsibility develops accordingly. In general, the servant assumes the ordinary risks and dangers incident to the employment in which he engages to the extent, and only to such extent as they are known to him, but if the employee be of immature years, the assumption of risk is commensurate only with his age, experience and capacity."

Now, the next ground of defense which you will consider is that the act is unconstitutional. I will say to you, as a matter of law, gentlemen of the jury, that this act is not unconstitutional, but that it is constitutional, and that the matters and things declared therein to be law should be observed and enforced.

I do not understand that the answer alleges contributory negligence any further than this, and so it is unnecessary for me to enter upon that discussion further.

Mr. RICHARDSON: Contributory negligence is one of their defenses, your Honor. I would like that rule of contributory negligence given.

COURT: I will not give it unless it is so alleged.

Mr. SMITH: The defense is really for negligence we have set up; not contributory negligence. There is a vast difference between negligence and contributory negligence.

COURT: On the part of the boy?

Mr. SMITH: Yes.

COURT: Then that would be contributory negli-

gence in this case, if you depend upon that.

I will instruct you, gentlemen of the jury, that the statute has provided this: "The contributory negligence of the person injured shall not be a defense, but may be taken into account by the jury in fixing the amount of the damages." What we mean by contributory negligence is negligence on the part of the plaintiff; and if you find that the plaintiff, the boy, in any work that he was doing, contributed to his own injury—if you find that to be a fact, if you find it to be a fact that he did so conduct himself that his own acts contributed to his injury, then you will take that into consideration with the negligence of the defendant, if you find the defendant negligent, and you will consider it all together in determining the amount of damages which the plaintiff should recover.

The plaintiff has the burden of proof in establishing negligence as alleged in the complaint. What we mean by burden of proof is the establishment of the fact alleged by a preponderance of the evidence. If the plaintiff has made out his case by the weight of the evidence so that it carries the scales down on his side, be it ever so little, he would have a right to recover.

The defendant as to the affirmative defenses set up also has the burden of proof as to those defenses; and if you find the plaintiff negligent, and that the defendant has established the affirmative defenses alleged by a preponderance of the evidence, why then, of course, the defenses must stand, and the verdict

would then be for the defendant.

You are to be the judges of the credibility of the witnesses. The court gives you the law, and you will follow his instructions as to that; but you are the sole judges of the credibility and the effect of the evidence. You must determine the credibility of the witnesses by the manner of their testifying upon the witness-stand. Every witness is presumed to speak the truth, but this may be overcome by the manner in which he testifies, and by contradictory evidence and other evidence which tends to discredit his testimony. And in this relation you may take into consideration the interests which the witnesses have in the outcome of this action.

I will instruct you further that, whatever the court may have said during this trial, or throughout the trial, which in any way tends, if anything of the kind has been said, to indicate to you the mind of the court upon the facts in this case, you must disregard that entirely unless what might have been indicated corresponds with your views and conclusions in the premises.

As to the measure of damages, I will give you an instruction which has been given in another case upon that subject:

There is no rule of law which the court can state to you by which the amount of damages can be ascertained to a mathematical certainty. In cases of this character, that question must be left largely to the judgment—it must be left entirely to the judgment

and discretion of the jury, under certain rules which I will call to your attention. You will have a right, in estimating the amount of damages, to consider the pain and suffering the plaintiff endured on account of the accident; the loss of time incident thereto; his impaired earning capacity, if it is so impaired by reason of the injury. It will also be necessary for you to consider whether or not the injury is likely to be permanent, or to continue for any great length of time. And after considering all these questions, then it is your duty, if you find in favor of the plaintiff, to assess his damages at such a sum as you in your judgment think is a fair compensation in dollars and cents for the injury which he has suffered.

That completes the instructions, unless the counsel have some suggestion to make.

Mr. SMITH: Just one suggestion, if the Court please, that I think would clarify the matter a little. I think the Court is very plain about the distinction between operating as receiver and lessee, but I believe your Honor omitted the latter part of the instruction, that if the jury find that Mr. Betts was operating as lessee the verdict should be for the defendant.

COURT: Yes, that is understood, of course.

Have you any exceptions to take to the instructions?

Mr. SMITH: I presume we might agree that either side may have an exception to those instructions requested and not given by the court.

Mr. BOOTHE: We can agree on that some other time, your Honor.

COURT: The exceptions must be taken now. That is the rule of this court, that the exception must be taken before the jury.

Mr. SMITH: To the requests which I made, I have put after each request that if the instruction is not given as requested, I should except thereto. Does the Court think I should except in addition thereto?

COURT: Yes, you may save your exception to each request not given.

Mr. SMITH: Yes, your Honor.

Mr. RICHARDSON: The Court covered most of the instructions requested by the plaintiff, but in order to be sure of my rights, the plaintiff excepts to all instructions not given as requested in his requested instructions.

COURT: Very well.

Mr. SMITH: I think the Court covered nearly all that we asked, but then at the same time we want the exception.

COURT: Gentlemen of the jury, if you find for the plaintiff, your verdict should be like this: "We, the jury duly sworn and impaneled in the above entitled action, do find for the plaintiff, and against Robert M. Betts, the Receiver of the Cornucopia Mines Company of Oregon, the defendant, and assess plaintiff's damages in the sum of Dollars." You will fill in the amount of damages, and the verdict will be signed by the foreman. When you retire you

will select one of your number as foreman. The verdict for the defendant is merely, "We, the jury, find for the defendant," if you find that way, and that will be signed by the foreman.

Now, gentlemen, you may retire to consider your verdict.

Jury retire.

[Defendant's Exhibit G.]

This INDENTURE made this 1st day of November in the year nineteen hundred and eleven, by and between the CORNUCOPIA MINES COMPANY OF OREGON, a corporation duly created, organized and existing under and by virtue of the laws of the State of Maine (hereinafter called the lessor) party of the first part, and Robert M. Betts, of Spokane, Washington, hereinafter called the "lessee", party of the second part:

WITNESSETH:

The said lessor for and in consideration of the royalties, covenants and agreements hereinafter reserved, and by the said lessee to be paid, kept and performed, hath granted, demised and let, and by these presents doth grant, demise and let unto the said lessee all of the following described real and personal property, mines and mining property, mining claims and equipment situated in the County of Baker, in the State of Oregon, and more specifically described as follows:—

1. All that certain quartz lode, mining claim, known, located and recorded as the "Union", the same

being designated by the Surveyor General as lot No. 310, embracing a portion of Section 28 T6 SR 45 E. W. M., and designated in the United States Land Office at LaGrande, Union County, Oregon, as mineral entry numbered 125, containing 19.27 acres more or less.

2. All that certain quartz lode mining claim, known, located and recorded as the "Companion", the same being designated by the Surveyor General as lot No. 312, embracing a portion of Section 26 T6 SR 45 E. W. M., the same being designated in the United States Land Office at LaGrande, Union County, Oregon, as mineral entry numbered 124 and containing 12.57 acres more or less.

3. All that certain quartz lode mining claim, known, located and recorded as the "Red Jacket", described as follows: Beginning at a corner post No. 1 s. 61.05 east 1563 feet from the quarter section corner between Sects. 27 and 28 T6 SR 45 E. W. M., marked corner No. 1 R. J. M. C. sur No. 10, thence N 15. 1032 East 1353 feet to corner post No. 2, thence N. 82 west 600 feet to corner Post No. 3, thence S. 91.015 west 1339 feet to the corner post No. 4, thence S 82 East 450 feet to place of beginning, designated by Surveyor General as lot No. 43 embracing a portion of Sec. 28 T6 SR E. W. M., certificate No. 68, and containing 16.13 acres more or less.

4. All that certain quartz lode mining claim, known, located and recorded as the "Prescott", the same being designated by Surveying General as lot

No. 313, embracing a part of section 26 T6 SR 45 E. W. M., and designated in the United States Land Office at La Grande, Union County, Oregon, as mineral entry numbered 126, and containing 11.60 acres more or less.

5. All that certain quartz lode mining claim, known, located and recorded as the "Phoenix" described as follows: Commencing at monument west and centre of claim which is also at N. E. corner of Union Mine and S. E. corner of Companion Mine, thence northerly along east side line of Companion Mine, 300 ft. to monument at N. W. corner of Phoenix claim, thence easterly 500 feet to N. E. corner Monument of claim, S. E. corner of claim being also at N. Centre and thence 600 ft. to monument of Lone Star U. S. Survey 219 westerly 500 ft. to S. W. corner of claim on east side line of "Union Mine", thence northerly 300 ft. along said Union side line to place of beginning, the same being designated by Surveyor General as Lot. No. 311, embracing a part of Sec. 28 T6 SR 45 E. W. M., and designated in the United States Land Office at La Grande, Union County, Oregon, as mineral entry numbered 128, and containing 5.52 acres more or less.

6. All that certain quartz lode mining claim, known, located and recorded as the "Helena", the same being designated by Surveyor General as Lot No. 314, embracing a portion of Sects. 28 & 33 in T6 SR 45 E. W. M., and designated in the United States Land Office at La Grande, Union County, Oregon, as

mineral entry numbered 127, containing 17.47 acres more or less.

7. All that certain quartz lode mining claim, known, located and recorded as the "Montana Consolidated", comprising the quartz lode mining claim known, located and recorded as the "Omer", "Montana", "Cliff" and "Butte", designated by the Surveyor General as lot No. 321 embracing a portion of Sects. 21 & 28 T6 SR 45 E. W. M., and also designated in the United States Land Office at LaGrande, Union County, Oregon, as mineral entry numbered 134 and containing 40.89 acres more or less; for a most particular description of said "Montana Consolidated" reference is had to the location notice thereof recorded in Book F of quartz mining claim, page 402 of the Union County records.

8. All that certain quartz lode mining claim, known, located and recorded as the "Whitman" and designated by the Surveyor General as Lot No. 37 embracing a portion of Sects. 27 & 28 in T6 SR 45 E. W. M., said lot extending 1370 feet in length along said lode and embracing 18.87 acres more or less.

9. All that certain quartz lode mining claim, known, located and recorded as the "Alta", and designated as Lot No. 38 embracing a portion of sections 28 & 28 in T6 45 E. W. M., said lot extending 1300 ft. in length along said lode.

10. All that certain quartz lode mining claim, known, located and recorded as the "Bruin", designated as Lot No. 39, embracing a portion of Sect. 27

in T6 SR 45 E. W. M., said lot extending 1300 ft. in length along said lode and embracing 16.87 acres more or less.

11. All that certain quartz lode mining claim, known, located and recorded as the "Eagle", and designated as Lot No. 41, embracing a portion of Sec. 27 T6 SR 45 E. W. M., said lot extending 1500 ft. in length along said lode, final mineral entry 48 for the S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 27 N. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Sec. 34 T6 SR 45 E. W. M., and embracing 20.66 acres more or less.

12. All that certain quartz lode mining claim, known, located and recorded as the "Creek", designated as Lot No. 40, embracing a portion of Sec. 27 T6 SR 45 E. W. M., said lot extending 1600 ft. in length along said lode, and designated as Lot No. final mineral entry No. 49 for the E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Sec. 34 E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ E. $\frac{1}{2}$ N. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ Sec. 27 T6 SR 45 E. W. M., and embracing 20.66 acres more or less.

13. All that certain quartz lode mining claim, known, located and recorded as the "Annex Placer", designated as Lot No. 42, embracing a portion of Sec. 27 T6 SR 45 E. W. M., said claim embracing 6.73 acres.

14. All that certain quartz lode mining claim, known, located and recorded as the "Motor", designated by the Surveyor General as lot No. 190, embracing a part of Sects. 28 & 33 in T6 SR 45 E. W. M., certificate No. 155, and containing 3.92 acres more or

less.

15. All that certain quartz lode mining claim, known, located and recorded as the "Gore", designated by the Surveyor General as Lot No. 320, embracing a part of Sec. 26 T6 SR 45 E. W. M., certificate No. 154, containing 6.25 acres, more or less.

16. All that certain quartz lode mining claim, known, located and recorded as the "Last Chance", consolidated mining claim consisting of all the divided north one-half of the "Last Chance" mine or mining claim and all of the White Swan mining claim, the location of said claims being of record in the records of Union County, Oregon, at Union, to which records reference is hereby made for a further description.

17. All that certain quartz lode mining claim, consisting of the south one-half of the "Last Chance" quartz lode mining claim, being the original location of E. P. Howard and John Carey, and designated by the Surveyor General as Lot No. 39, embracing a part of Sec. 28 T6 SR 45 E. W. M., certificate No. 100 and containing 7.76 acres more or less.

18. All that certain quartz lode mining claim, known, located and recorded as the "Moonshine", said mine being 400 feet more or less in length by 600 ft. in width and lying between the "Maverick" fractional claim and the "Mayflower" quartz claim.

19. All that certain quartz lode mining claim or fractional quartz ledge, known, located and recorded as the "Maverick".

20. All that certain quartz lode mining claim,

known, located and recorded as the "Florence", described as follows: Commencing at the north and centre monument of east side line of Union Mine and running thence northerly 300 ft. to the line of the "Prescott" mining claim, thence southwesterly 1500 ft. along line of said Prescott mining claim, thence 600 ft. southerly, thence 1500 ft. N. E. to the S. E. corner of the Union Mine, thence northerly 300 ft. to the place of beginning.

21. All that certain quartz lode mining claim, known, located and recorded as the "Red Fox", and recorded in book G, p 103, of Records of Quartz Locations, in the office of the Clerk for Union County, Oregon, to which reference is hereby made for further description.

22. All that certain quartz lode mining claim, known, located and recorded as the "Old Gray Fox", and recorded in Book G, p 103, of Records of Quartz Locations, in the Office of the Clerk for Union County, Oregon, to which reference is hereby made for further description.

23. All that certain quartz lode mining claim, known, located and recorded as the "Dunn & Norton", said claim being located by Thomas H. Dunn and William Norton, on May 4th, 1891, and recorded in Book F, page 302, of Records of Quartz Locations, in the Office of the Clerk for Union County, Oregon, May 12th, 1891, to which reference is hereby made for further description.

24. All that certain quartz mining claim known,

located and recorded as the "Coupd'Or", and described as follows: Bounded on the South by the Main Elk Creek and the Spot Quartz Claim; on the west by the Hope Mill and Flagg Staff Mine, and about one-fourth of a mile to the west from the town of Cornucopia, being the same quartz lode mining claim granted by Lawrence Panter and Dominique Soldini, by Lawrence Panter, his attorney in fact, to John E. Searles, by deed recorded in Book 47 of Deeds, p. 603 of Records of Union County, Oregon.

25. All that certain tunnel right or mining claim known as the "W. J. Clark Tunnel Claim", located by William J. Clark on July 23rd, 1896, location notice whereof is duly recorded in book F, p. 409, of Records of Quartz Mining Claims of Union County, Oregon, to which reference is hereby made for further description.

26. All and singular that mill site known as the "Prescott Mill Site", consisting of five acres of non-mineral ground described as follows: Commencing at the S. E. corner of the Prescott Mining Claim and running thence southerly to Elk Creek, then up Elk Creek to east side line of Ohio Mining claim, thence northerly to S. W. corner of Prescott Claim, thence westerly along south end line of Prescott claim to place of beginning, the location notice whereof was recorded in Book 1 of Mill Sites, p. 126, Union County Records to which reference is made for further description.

27. All and singular that mill site known as the

"Motor Mill Site", consisting of the triangular area of non-mineral land containing less than five acres, situated between the north end line of the "Motor" Mining Claim as officially surveyed, the west side of the Lone Star claim and the east side line of the Lodi mining claim, the location notice whereof was recorded in Book 1 of Mill Sites, p. 130, Union County Records, to which reference is hereby made for a further description.

28. All that certain piece or parcel of land more particularly described as follows: Beginning at a point on the half section line that is south 16.50 chains from the $\frac{1}{4}$ section corner on the north line of said section 3; thence south 7.15 chains and tracing said half section line; thence west 7 chains, thence north 7.15 chains, thence east 7 chains to the place of beginning, containing 5 acres and being a portion of the E $\frac{1}{2}$ of N. W. $\frac{1}{4}$ Sec. 3 Tp. 7, S. R. 45 E. W. M., and known as Lot No. 3 situated in Baker County, (formerly Union County) Oregon, and more particularly described on p. 292 Book J of the Deeds Records of Union County, Oregon, reference to which is hereby made for further description said five acres being the same property conveyed to the estate of John E. Searles by Alexander McDonald by warranty deed dated February 14, 1902 and recorded on February 28, 1902 in Book 39 of Deeds, page 604 of the Records of Baker County, Oregon.

29. All that certain water right located by W. J. Clark and John E. Searles on August 26th, 1895, the

location notice whereof is recorded in Book E. of Water Rights, p. 70, Union County Records, to which reference is hereby made for further description.

30. All that certain water right of 200 inches of the south branch of Elk Creek located July 3, 1895, by W. J. Clark and John E. Searles, the location notice whereof was recorded in Book E. of Water Rights, page 70, Union County Records, to which reference is hereby made for a further description.

31. All that certain water right of 1000 inches of the water of Pine Creek, the location notice whereof is recorded in Book E of Water Rights, page 74, Union County Records, to which reference is hereby made for further description.

32. All those two certain water rights, the one of 100 inches of water running from the spring known as the Union Spring, situated, lying and being immediately under the Union Mine, and the other of 100 inches of water to be used and taken from Fall Creek, said water rights being adjoining and adjacent to said mining claims which were located by W. J. Burdette and which were conveyed by J. R. Farrell and wife to John E. Searles and William J. Clark by deed dated July 3rd, 1895, and which deed was on July 14th, 1896, recorded in the office of the County Clerk of Union County, Oregon, in Book C of Mining Deeds, on page 634 to which deed reference is hereby made for further description.

33. The buildings, structures, erections and constructions now placed upon any of the hereinbefore

described property with their fixtures.

Together with all the machinery for the reduction of ore, mining machinery, mining tools and equipment and personal property, and all equipment and machinery for generating power, and mineral bearing ore now actually mined and broken upon said property, and the concentrates or proceeds therefrom located at Cornucopia, or at Baker City, Oregon, or on the property known as the Cornucopia Mines Company of Oregon, or elsewhere now held; and also all the easements, property, leasehold rights and things of whatsoever name or nature now connected with or relating to the said Cornucopia Mines, together with all and singular tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and also all the estate, right, title and interest, property, possession, claim and demand whatsoever as well at law as in equity of the Cornucopia Mines, in and to the same and any and every part thereof with the appurtenances. The personal property and chattels above leased or intended so to be, now held or hereafter acquired, shall be deemed real estate for all the purposes of this indenture and shall be held and taken to be fixtures and appurtenances of the said Cornucopia Mines and part thereof and are so to be used.

TO HAVE AND TO HOLD under the said lessee, for the term of twelve months from the date hereof expiring at noon on the 1st day of November A. D. 1912, unless sooner forfeited or determined through

the violation of any covenant hereinafter against the said tenant reserved.

And in consideration of such demise, the said lessee doth covenant and agree with said lessor as follows, to wit:

To not assign this lease or any interest thereunder, and not to sublet the said premises or any part thereof, without the written consent of said lessor, and not to allow any person or persons not in privity with the parties hereto, to take or hold possession of said premises, or any part thereof, under any circumstances or any pretense whatever.

To allow said lessor and its agents at any time to enter upon and into all parts of said mines and premises for purposes of inspection, or for any other purpose whatsoever.

To pay to said lessor as Royalty ninety per cent. of the net mill returns of all ore extracted or to be extracted from said mines; and said lessor is to have the sole and exclusive control and right to say to whom and how the ores extracted from said mines, and the concentrates therefrom, shall be disposed of, and said lessee will be directed solely and exclusively how said ores and concentrates shall be sold and disposed of.

To well and sufficiently timber said mines at all points where proper, and work and develop said mines in accordance with good mining.

To deliver to said lessor or its agent or agents, all the said described mines, material and premises in at

least as good condition as the same are now in at the date of this lease; and without demand or further notice of any kind or character said lessee must deliver said described mines and premises over to said lessor on the 1st day of November, 1912, at noon on said day, or any other day or time previous thereto, upon demand for violation of any provision or covenant contained in this lease, or for forfeiture thereof.

Said lessee must promptly pay for all labor and supplies of every kind and character whatsoever furnished to said lessee by any person or persons under or in privity with him used in operating and working said mines and premises under this lease; and if said wages of miners and laborers and workmen, and said supplies under this lease are not paid promptly when due from said lessee, then said lessor at its election may declare a forfeiture of this lease, and take possession of said mines and premises upon demand therefor, and immediately upon said demand being made with or without force, and with or without process of law, and may proceed against any person or persons that may be found in occupation thereof as guilty of unlawful detainer.

IN WITNESS WHEREOF the lessor has caused this instrument to be executed in its corporate name by its President, and its corporate seal to be affixed hereto and attested by its Secretary, and the lessee has hereunto set his hand and seal, all as of the 1st day of November in the year nineteen hundred and eleven.

CORNUCOPIA MINES CO.

By JOSEPH B. THOMAS, (Seal)

President.

ROBERT M. BETTS. (Seal)

Attest:

INA W. HUNTER,

Secretary.

STATE OF NEW YORK,

County of New Work,—ss.

On this 9th day of November A. D., 1911, before me personally appeared JOSEPH B. THOMAS, President of the CORNUCOPIA MINES COMPANY OF OREGON, to me known, who, being by me duly sworn, did depose and say that he resides in the City of New York, County of New York, and State of New York, that he knows the corporate seal of the CORNUCOPIA MINES COMPANY OF OREGON; that the seal affixed to the foregoing instrument is the corporate seal of said company, and was so affixed by order of its Board of Directors, and that by like order he signed the same as President. And on the same day and year before me personally appeared I. W. HUNTER, Secretary of the said company, to me known, who, being by me duly sworn, did depose and say that she resides in the city of East Orange, County of Essex, and State of New Jersey; that she knows the corporate seal of the Company; that the seal affixed to the foregoing instrument is the corporate seal of said company, and was so affixed by order of its Board of Directors, and that by like or-

der she attested the same as Secretary.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal this 9th day of November, 1911.

(L. S.)

JAMES A. NELSON,
Notary Public N. Y. Co.
Certificate filed N. Y. Co.

STATE OF NEW YORK,

County of New York,—ss.

On this 9th day of November in the year nineteen hundred and eleven, before me personally came Joseph B. Thomas, to me known, and known to me, to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my seal, this 9th day of November, 1911.

JAMES A. NELSON,
Notary Public N. Y. Co.
Certificate filed N. Y. Co.

Indexed Compared. 20883.

STATE OF OREGON,

County of Baker,—ss.

I certify that the within was received and duly recorded by me in Baker County Records, Book of L. & A., Vol. G, Page 270, on the 28th day of Nov., 1911.

Filed at 10:30 o'clock a. m.

A. B. COMBS Jr.,
Co. Clerk.

By GEO. S. KING,
Deputy.

Filed April 11, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 19 day of September, 1913, there was duly filed in said Court, a Petition for Writ of Error, in words and figures as follows, to wit:

[Petition for Writ of Error.]

(Title.)

Now comes Robert M. Betts, receiver of Cornucopia Mines Company of Oregon, defendant herein, and says that on the 11th day of April, 1913, a jury in the above entitled cause duly impaneled therein rendered a verdict in the sum of \$12,500.00 in favor of the plaintiff and against the defendant; and for costs and disbursements therein: which verdict and judgment was by the Court thereafter duly entered against the said defendant and in favor of the plaintiff as aforesaid.

In which judgment and the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE, this defendant prays that a writ of error issue in his behalf to the United States Circuit Court of Appeals for Ninth Circuit for the cor-

rection of errors so complained of, and that a transcript of the record proceedings and papers in this cause duly authenticated may be sent to said Court of appeals.

EMMETT CALLAHAN,
SMITH & LITTLEFIELD,
Attorneys for Defendant.

[Endorsed]: Petition for Writ of Error. Filed
Sep. 19, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 19 day of September, 1913, there was duly filed in said Court. Assignments of Error in words and figures as follows, to wit:

[Assignments of Error.]

(Title.)

Now comes the defendant Robert M. Betts, Receiver of the Cornucopia Mines Company of Oregon, a corporation, and in connection with his Petition for a Writ of Error in the above entitled action, says that there was error on the part of the District Court of the United States for the District of Oregon in regard to the matters and things hereinafter set forth, and defendant makes this, his

ASSIGNMENTS OF ERRORS

I.

During the trial of said action, John L. Bisher, Jr.,

was called as a witness in his own behalf and was asked the following questions:

Q. Did they furnish you with any tools?

A. Well, Mr. Harbert, Harry Harbert, gave me a pair of climbers and a belt, and a pair of pliers.

Q. The pliers, did they have insulated handles?

A. No, sir. The pair of pliers that he gave me, they were dull, and the climbers were dull, and I sent down home and got a pair that I had used in climbing telephone poles, they were sharp, and the pliers, and the belt—I wore the belt that he gave me. And the pliers I sent down home and got a pair of pliers, because those that he gave me were old, and I couldn't use them, and they were so large I couldn't hardly use them.

Q. Did you try to use the climbers that he gave you?

A. I climbed one pole with them.

Q. Why couldn't you use them?

A. They were too dull. You cannot use climbers when they are very dull. You might slip. I climbed the pole right in front of the store when we was putting the lights in the saloon.

Mr. SMITH: We move to strike out all this testimony about the climbers and the belt and the pliers, for the reason that there is no risk alleged to have been occasioned by them at all. It simply encumbers the record.

COURT: I understand they allege that he was not supplied with the proper utensils.

Mr. RICHARDSON: That is it, your Honor.

Mr. SMITH: But, if your Honor please, there is no charge he was hurt by reason of it. His charge is he was hurt by electric shock. He doesn't claim that they had anything to do with the shock.

COURT: I will overrule the objection.

Mr. SMITH: Note an exception.

That the Court erred in not granting defendant's motion to strike out all of the foregoing testimony.

II.

During the trial of said action, Albert Smith was called as a witness in behalf of the plaintiff, and was asked the following questions:

Q. Did you hear any one give Johnnie Bisher any orders?

A. Yes, sir.

Q. On that day?

A. I heard Mr. Ed Mills tell Johnnie Bisher that What's his name?

Q. Buxton?

A. Mr. Buxton—to go down, that he wanted him on the line.

Mr. SMITH: How was that, now? State that again.

Q. Just repeat that loud enough so we can hear it.

A. Mr. Mills, Ed Mills—

Q. Who was Ed. Mills?

A. Well, he was the man that I was working under—the boss.

Q. Working under?

A. Yes, he was the boss. He was the boss at that time, that I was working under.

Q. What did he say?

A. He told Johnnie Bisher that Mr. Buxton wanted him down on the line?

Q. On what line?

A. On the electric line.

Q. Who was Mr. Buxton?

A. Well, he was the man at the powerhouse. I don't know him—don't know the man at all.

Mr. SMITH: We move to strike out the evidence as incompetent, irrelevant and immaterial.

COURT: I will overrule the motion.

Exception allowed.

Excused.

The objection was overruled by the Court, and the defendant then and there excepted thereto, and said exception was duly allowed by the Court.

That the Court erred in allowing said witness to answer said questions.

III.

During the trial of said action, L. W. Sloper was called as a witness in behalf of plaintiff, and was asked the following questions:

Q. I will ask you, Mr. Sloper, if a three-phase transmission line, such as has been described by the witnesses in this case that you have heard, consisting of copper wires a little larger than a lead pencil, strung upon poles about 25 feet from the ground and on a support known as a cross-arm, such as the one

in evidence here, said transmission lines being the distance as you observe between these two insulators on this "Exhibit B-1" of both plaintiff and defendant, the cross-arm being nailed to a post about eight inches in diameter, and the third wire being placed on an insulator on this end of the cross-arm, would it be, in your opinion, safe for a repair man or any one else to make repairs, or to change these insulators, on uninsulated wires carrying a voltage of electricity as high as 2300 volts? State whether or not, in your opinion, a workman or repair man, without the use of rubber gloves, without the use of insulated handles or pliers, or any other lineman protectors, could make those changes without endangering themselves to great injury and shock by electricity?

Mr. SMITH: Objected to as invading the province of the jury, and as incompetent.

COURT: You might qualify him as an expert.

Mr. RICHARDSON: He is qualifying as an expert lineman.

COURT: Very well. I will overrule the objection.

Defendant objected to this question as invading the province of the jury and as being incompetent. The objection was overruled by the Court, and the defendant then and there excepted thereto, and said exception was duly allowed by the Court.

That the Court erred in allowing said witness to answer said question.

IV.

During the trial of said action, L. H. Kennedy was

called as a witness on behalf of the plaintiff and was asked the following questions:

Q. What is the custom of the average employer of requiring linemen to use rubber gloves?

Mr. SMITH: Objected to, as the custom is not pleaded in this case, or relied on. He cannot rely upon the statute and custom at the same time. If he wants to amend his complaint and rely on custom, he can do so.

Mr. RICHARDSON: It is not a question of relying on custom, if they failed to use the safety device, any safety device, for the purpose of protecting their employes.

COURT: I will overrule the objection. You may proceed.

Defendant objected to this question as the custom is not pleaded in this case or relied upon, and that such questions do not tend to prove any issue in this case and were not proper questions to propound to the witness. The objection was overruled by the Court, and the defendant then and there excepted thereto, and said exception was duly allowed by the Court.

That the Court erred in allowing said witness to answer said question.

V.

At the conclusion and close of plaintiff's case, Mr. Richardson, counsel for plaintiff, said: "We will rest, I believe, your Honor," whereupon Mr. Smith on behalf of defendant moved for a non suit, upon the ground that the evidence of the plaintiff and his

witnesses does not show any negligence on the part of the defendant whatsoever. It shows that the plaintiff does not know how this injury occurred, and the facts of the injury are left to inference.

COURT: I will overrule the motion. You may proceed with your testimony.

Mr. SMITH: We will note an exception, your Honor.

And the defendant then and there excepted thereto, and said exception was duly allowed by the Court.

That the Court erred in not sustaining defendant's motion for non suit.

VI.

That during the trial of said action, Robert M. Betts was called as a witness on behalf of the defendant, and on his cross examination by plaintiff's attorney, was asked the following questions:

Q. You didn't know that the laws of the State of Oregon required you to have your wires insulated, did you, Mr. Betts?

Mr. SMITH: Objected to as incompetent, irrelevant and immaterial. Ignorance of the law is no excuse for anybody. If it requires it, it does; if it doesn't, it don't. It is for the Court to say. It is immaterial whether he knew it or not. Men have been hung when they didn't know what the law was.

COURT: You may answer the question.

Defendant objected to the foregoing question; the objection was overruled by the Court, and the defendant then and there excepted thereto; and said ex-

ception was duly allowed by the Court.

That the Court erred in allowing said question to be answered.

VII.

At the conclusion of the testimony of Robert M. Betts, witness on behalf of the defendant, defendant and plaintiff informed the Court that the testimony for and on behalf of the plaintiff and defendant was closed and no further testimony was given in said action. Whereupon Mr. Smith, as Attorney on behalf of the defendant, interposed a motion for a directed verdict in the following words, to-wit:

Mr. SMITH: Before proceeding, if your Honor please, to get the record, we desire to interpose a motion for a directed verdict. The defendant at this time asks the Court to instruct the Jury to return a verdict for the defendant upon the following grounds: First, the evidence shows that both plaintiff and defendant are residents, citizens and inhabitants of the State of Oregon, and this Court has no jurisdiction of the case. The bare fact that the defendant is sued as receiver in a court action, does not give this court jurisdiction where the diverse citizenship does not exist.

Second, the evidence conclusively shows that Robert M. Betts, Lessee, was operating this mine, and electrical plant at the time of the injury and not Robert M. Betts as Receiver, and that by reason of the sale of the property, the duties of the receiver had terminated.

Third, That the evidence fails to disclose any proximate cause for the injury other than the negligence of the plaintiff himself. There is no negligence of the master which is shown to have contributed in any way to the injury.

Fourth, The testimony shows that the plaintiff was a volunteer, that the master owed him no duty; that his duties did not require him to be on the pole, or among the wires; that the master did not know that he was among the wires, or on the pole, or was attempting in any way to discharge duties thereon.

Fifth, The evidence shows that the injury was occasioned solely by the negligence of the plaintiff.

COURT: The Court will overrule the motion.

Mr. SMITH: We will note an exception on the several grounds separately, if the Court please.

COURT: Very well.

The defendant's motion for a directed verdict was overruled by the Court, and the defendant then and there excepted thereto, and said exception was duly allowed by the Court.

That the Court erred in not allowing defendant's motion for a directed verdict in this action.

VIII.

While Mr. Richardson, Attorney for Plaintiff, was making his argument to the Jury, the following occurred:

Mr. RICHARDSON: Now, gentlemen, what about Mr. Betts. When we had Mr. Betts, this lessee Betts—lessee Betts on the witness stand, that he

likes to be called. That is the title that he wants to be called. When he was on the witness stand, I asked Mr. Betts, I says, "Mr. Betts, what about these rubber gloves?" First I asked him if he was an electrician. "No." "How came you to suggest to Harry Harbert that you would give him rubber gloves? Did you have any there?" "No." "How came you to suggest it?" "Well, I just naturally thought about it. It just naturally kind of occurred to me that maybe he might want them." Now, gentlemen, there is a man that is not an electrician, a man that is not versed in the proper devices that an electric lineman needs, by his own admissions, and still he would come in here, and he would have you believe from that witness stand that he was the one that suggested about rubber gloves. Gentlemen, I will tell you, that will not hold water. That does not appeal to a man of real common ordinary intelligence as being something that a man like Betts would think. It looks like it must be a lawsuit, gentlemen, that suggested that, or an injury that suggested that. It looks like the same thought suggested that to him that suggested that he was all of a sudden, instead of being a receiver of the Cornucopia Mines Company, he was a lessee.

Mr. SMITH: We except to the remarks of counsel, and assign them as error.

Mr. RICHARDSON: Your Honor, I did not make very many interruptions, and I am drawing inferences. The jury knows that I am not stating these as facts.

COURT. I will overrule the motion. You may save an exception."

That the Court erred in overruling defendant's motion in reference to the foregoing remarks of Counsel before the Jury in said cause.

IX.

Prior to the argument to the Jury, the defendant duly requested in writing that the Court should give to the Jury the following instructions, the same being numbered from one to thirteen inclusive, excepting therefrom instruction numbered seven which was given by the Court to the Jury as requested by defendant.

Instruction No. 1:

I.

Gentlemen of the Jury, You are instructed to return a verdict for the defendant.

If the Court refuses to give the above instruction, the defendant excepts thereto, and without waiving such exception or his rights, requests the following:

Instruction No. 2:

II.

You are instructed that the evidence in this case does not show the proximate cause of the injury. You will therefore return a verdict for the defendant.

If the Court refuses the above instruction, the defendant excepts to such refusal, and without waiving his exception or his rights, requests the following instruction:

Instruction No. 3:

III.

You are instructed that the evidence in this case shows that the plaintiff was injured through his own negligence and not in the discharge of any duty of any kind whatsoever to the defendant. You are therefore instructed to return your verdict for the defendant.

If the Court refuses the above instruction, the defendant excepts thereto, and without waiving such exceptions or his rights, requests the following:

Instruction No. 4:

IV.

You are instructed that the evidence in this case shows that Robert M. Betts, lessee, was operating the mine and power plant at the time of the injury, and as he is not a party to this action your verdict must be for the defendant.

If the Court refuses the above instruction, the defendant excepts thereto, and without waiving his exceptions or his rights, requests the following:

Instruction No. 5:

V.

If you believe from the evidence that Johnnie Bisher, at the time he was injured, was on the pole and was not in the discharge of any duty imposed upon him, or if he was on the pole in a furtherance of his own learning or enlightenment, and his duties did not require him to go up on the pole or among the wires, then he is what is known in law as a volunteer and he cannot recover in this case and your verdict must

be for the defendant.

If the court refuses the above instruction, the defendant excepts thereto, and without waiving his exception or his rights, requests the following:

Instruction No. 6:

VI.

You are instructed that no person can recover damages from another for injuries inflicted by himself. If, therefore, you believe from the evidence that at the time of the injury Johnnie Bisher received the same through any carelessness of his own, or while doing an act which his duties did not require, or in any other way than through the negligence of his employer, then I instruct you that he cannot recover in this action and your verdict must be for the defendant.

If the Court refuses to give the above instruction, the defendant excepts thereto, and without waiving his exception or his rights, requests the following instruction: (Instruction No. VII was given by the Court as requested by defendant.)

Instruction No. 8:

VIII.

Some testimony has been introduced as to rubber gloves and as to insulated nippers and as to body protectors.

I instruct you that the evidence fails utterly to show that the presence of insulated nippers or body protectors would have prevented the injury. You will, therefore, disregard this evidence for no negligence of any employer is ground for liability unless such

negligence caused injury.

If the Court refuses to give the above instruction, the defendant excepts thereto, and without waiving his exception or his rights, requests the following:

Instruction No. 1X:

IX.

As to rubber gloves, I instruct you that if you believe from the evidence that the nature or character of the work in question was such that rubber gloves were not an essential requisite, then failure to furnish them would not be negligence.

I instruct you further that if you believe from the evidence that the employer did not know that Johnnie Bisher was working on the poles or among the wires, then the master would be under no obligation to furnish him any protection.

Instruction No. X.

X.

I further instruct you that if you believe from the evidence that the master offered to or was ready and willing to furnish rubber gloves to his employees who were working among the wires, and that such employees knew it and failed to request them, then the fact that they were working without rubber gloves would be their own voluntary choice or way and the employer would not be liable for the injury and the verdict in this case would be for the defendant.

If the Court refuses to give the above instruction, the defendant excepts thereto, and without waiving his exception or his rights, requests the following in-

struction :

Instruction No. XI.

XI.

I instruct you further that the testimony in this case shows that the defendant, Betts, is a resident, citizen and inhabitant of Oregon, and plaintiff is also a resident, citizen and inhabitant of the State of Oregon; the Court, therefore, has no jurisdiction of this case and you are directed to return a verdict for the defendant.

If the Court refuses to give the above instruction, the defendant excepts thereto, and without waiving his exception or his rights, requests the following instruction :

Instruction No. XII:

XII.

I further instruct you that the evidence in this case does not show that Harry Harbert had any right or authority to control or order Johnnie Bisher in the discharge of his duties, except such as pertained to sending up material and carrying same from pole to pole. Harry Harbert was not a foreman, he was not a person in charge of the work or any part thereof, he was not discharging any duty of the master in relation to Johnnie Bisher, and whatever Johnnie Bisher did in mounting the poles or attempting to learn the work of an electrician or attempting to do anything in or about the wires was of his own voluntary choice or selection, and he cannot recover in this action, and your verdict must be for the defendant.

If the Court refuses to give the above instruction, the defendant excepts thereto, and without waiving his exception or his rights, requests the following instruction :

Instruction No. XIII.

XIII.

I instruct you that the evidence shows that Johnnie Bisher knew the current was on these wires, also the volume of voltage and that said wires were alive, and if you believe that his duties as supply boy did not require him to work among the wires or on the poles but that he was acting outside his duties as supply boy, then I instruct you that he assumed the risk of danger, and if he was injured outside the scope of his duties as supply boy then he assumed the risk of the injury and he cannot recover, and your verdict must be for the defendant.

The Court refused to give such foregoing instructions to the jury, numbered one to thirteen inclusive, excepting therefrom said instruction numbered seven which was given by the Court as requested by the defendant; and the defendant, prior to the retiring of the jury for deliberation, duly excepted to the action of the Court in refusing to give said foregoing instructions numbered from one to thirteen inclusive, excepting therefrom instruction numbered seven, which was given to the jury; and said exceptions were then and there allowed to each of said foregoing instructions.

That the Court erred in refusing to give said foregoing instructions to the jury as requested by the defendant.

X.

That the Court erred in allowing said cause to be submitted to the jury for the reason that there is no evidence showing that John L. Bisher was or is the guardian ad litem of John L. Bisher, Jr.

XI.

That the District Court erred in overruling defendant's motion for a new trial, which is as follows:

[Motion for New Trial.]

*"In the District Court of the United States for the
District of Oregon.*

JOHN L. BISHER, Jr., by JOHN L. BISHER, his
Guardian ad litem,

Plaintiff,

vs.

THE CORNUCOPIA MINES CO. OF OREGON,
a corporation, and ROBERT M. BETTS, Re-
ceiver of Cornucopia Mines Company of Ore-
gon.

"Now comes the defendant Robert M. Betts, Receiver of the Cornucopia Mines Company of Oregon, a corporation, and moves the court to set aside the verdict of the jury and judgment entered thereon in this cause, and to grant him a new trial herein for the following reasons:—

I.

Court erred in overruling defendant's motion for

non-suit.

II.

Court erred in overruling and refusing to grant defendant's motion for directed verdict at the close of all of the testimony on all the grounds stated in said motion, and on each ground severally.

III.

The verdict of the jury is contrary to the law and against the evidence.

IV.

That said verdict is against the clear weight of the evidence given at the trial.

V.

Error in law occurring at the trial of said action and excepted to by the defendant at the trial.

VI.

Excessive judgment and damages given against defendant and in favor of plaintiff which was given under the influence of sympathy, passion and prejudice.

VII.

That said verdict and judgment was against the law and contrary to the instructions as to the law given to the jury by the Court.

VIII.

That the Court erred in refusing to give the instructions as to the law in the case requested by the defendant, and excepted to at the trial of said action.

IX.

This motion will be based upon the records and files in the above cause; the minutes of the court and

the Bill of exceptions which is to be hereafter prepared and served upon the attorney for plaintiff herein, which Bill of Exceptions will contain also a full transcript of the testimony as taken and extended by the official stenographer of the above named court.

(Signed) SMITH & LITTLEFIELD,
EMMETT CALLAHAN,
Attorneys for Defendant."

XII.

The said District Court erred in rendering judgment in favor of the plaintiff and against the defendant for the reason that the same is contrary to the law and the evidence.

WHEREFORE, the said defendant, plaintiff in error, prays that the judgment of the District Court of the United States for the District of Oregon in the above entitled cause be reversed, and that the said District Court be directed to grant a new trial of said cause.

EMMETT CALLAHAN,
SMITH & LITTLEFIELD,
Attorneys for Defendant.

[Endorsed]: Assignment of Errors. Filed Sep. 19, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 19 day of September, 1913, there was duly filed in said Court, an Order Allowing Writ of Error, in words and figures as follows, to wit:

[Order Allowing Writ of Error.]

*In the District Court of the United States for the
District of Oregon.*

JOHN L. BISHER, Jr., by JOHN L. BISHER, his
guardian ad litem,

Plaintiff,

vs.

THE CORNUCOPIA MINES COMPANY OF
OREGON, a corporation, and ROBERT M.
BETTS, Receiver of said Cornucopia Mines
Company of Oregon,

Defendants.

On this 24 day of September, 1913, came the above named defendant by Emmett Callahan and Smith and Littlefield, his Attorneys, and file herein and present to the Court its Petition praying for the allowance of a Writ of Error intended to be urged by the defendant, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered on the 11th day of April, 1913, duly authenticated, may be sent to the United States Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may appear in the premises. Upon consideration hereof, the Court does allow the Writ of Error, the Supersedes bond, if such bond is given by said defendant, to be in the sum of Thirteen Thousand (\$13,000.00) Dollars.

CHAS. E. WOLVERTON,

Judge.

[Endorsed]: Order allowing Writ of Error. Filed Sep. 19, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 25 day of September, 1913, there was duly filed in said Court, a Bond on Appeal, in words and figures as follows, to wit:

[Bond on Writ of Error.]

*In the District Court of the United States for the
District of Oregon.*

JOHN L. BISHAR, Jr., by JOHN L. BISHAR, his
Guardian ad litem,

Plaintiff,

vs.

ROBERT M. BETTS, Receiver of Cornucopia Mines
Company of Oregon,

Defendant.

KNOW ALL MEN BY THESE PRESENTS:

That we the above named defendant, Robert M. Betts, Receiver of Cornucopia Mines Company of Oregon, a corporation duly organized under the Laws of the State of Maine, and doing business as such corporation in the State of Oregon, as principal, and AMERICAN SURETY COMPANY OF NEW YORK, a corporation duly organized and existing under the laws of the State of New York, and duly licensed as such corporation under the laws of the State of Oregon, for the purpose of making, guaran-

teeing, and becoming sole surety upon bonds and undertakings, does hereby undertake as surety, and is held firmly bound unto the above named plaintiff, John L. Bisher, Jr. by John L. Bisher, his guardian ad litem, in the sum of Two-thousand dollars, for the payment whereof well and truly to be made unto the said plaintiff above named, said Robert M. Betts, receiver Cornucopia Mines Company of Oregon, a corporation and AMERICAN SURETY COMPANY OF NEW YORK, a corporation, bind themselves, their successors and assigns jointly and severally by these presents.

Whereas, lately at a term of the District Court of the United States for the District of Oregon in an action pending in said Court between John L. Bisher, Jr. by John L. Bisher, his guardian ad litem, as plaintiff, and Robert M. Betts, receiver Cornucopia Mines Company of Oregon, a corporation, as defendant, a judgment was rendered against said defendant and in favor of said plaintiff, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of said Court to reverse the judgment in the aforesaid suit and a citation directed to the said plaintiff and admonishing him to be and appear at the next session of the United States Circuit Court of Appeals for the Ninth Circuit.

Now, therefore, the condition of the above obligation is such that if the above named defendant, Robert M. Betts, receiver Cornucopia Mines Company of Oregon shall prosecute said writ of error to effect and

pay all costs incurred herein, then the above obligation is to be void; otherwise the same shall be and remain in full force and virtue.

IN WITNESS WHEREOF the said Robert M. Betts, Receiver Cornucopia Mines Company of Oregon, a corporation, and the AMERICAN SURETY COMPANY OF NEW YORK, a corporation, have caused these presents to be executed this 25th day of September, 1913.

(Sd) ROBERT M. BETTS,
Receiver Cornucopia Mines Com-
pany of Oregon, a corporation, by
(Sd) EMMETT CALLAHAN,
Attorney for Receiver.

AMERICAN SURETY COMPANY
OF NEW YORK,

By JOHN K. KOLLOCK,
Resident Vice-President.

Attest: W. J. LYONS,
Resident Assistant Secretary.

Examined and approved this 25th day of September, 1913.

(Sd) CHAS. E. WOLVERTON,
Judge.

[Endorsed]: Undertaking on Writ of Error. Filed September 25th, 1913.

A. M. CANNON,
Clerk.

And afterwards, to wit, on the 26 day of September,

1913, there was duly filed in said Court, a Writ of Error, in words and figures as follows, to wit:

[Writ of Error.]

*In the United States Circuit Court of Appeals
for the Ninth District.*

ROBERT M. BETTS, Receiver of Cornucopia Mines
Company of Oregon,

Plaintiff in Error,

vs.

JOHN L. BISHER, Jr., by JOHN L. BISHER, his
guardian ad litem,

Defendant in Error.

THE UNITED STATES OF AMERICA, ss.

The President of the United States of America.

To the Judge of the District Court of the United
States for the District of Oregon: Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable CHAS. E. WOLVERTON, one of you, between John L. Bisher, Jr. by guardian, Plaintiff and Defendant in Error, and Robt. M. Betts, Receiver of Cornucopia Mines of Oregon, Defendant and Plaintiff in Error, a manifest error hath happened to the great damage of the said Plaintiff in Error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command

you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the HONORABLE EDWARD
DOUGLAS WHITE,

Chief Justice of the Supreme Court of the
United States this 26 day of September,
1913.

(L. S.)

A. M. CANNON,
Clerk of the District Court of the United
States for the District of Oregon.

[Endorsed]: Writ of Error. Filed Sep. 26, 1913.

A. M. CANNON,
Clerk.

And afterwards, to wit, on the 6th day of October, 1913, there was duly filed in said Court, a Citation on Writ of Error, in words and figures as follows, to wit:

[Citation on Writ of Error.]

UNITED STATES OF AMERICA,

District of Oregon,—ss.

To John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein Robert M. Betts, Receiver of the Cornucopia Mines Company of Oregon, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 26th day of September in the year of our Lord, one thousand, nine hundred and thirteen.

CHAS. E. WOLVERTON,

Judge.

Due service of the within citation by copy admitted October 6, 1913.

BOOTHE & RICHARDSON,

Attys. for Plaintiff.

[Endorsed]: Citation on Writ of Error. Filed Oct. 6, 1913.

A. M. CANNON,

Clerk.

And afterwards, to wit, on Tuesday, the 30 day of September, 1913, the same being the Judicial day of the Regular July 1913 Term of said Court; Present: the Honorable CHAS. E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Enlarging Time to File Transcript.]

(Title.)

No. 5784

September 30, 1913.

Now, at this day, good cause shown, it is Ordered that Defendant's time for filing the record and docketing this cause on the appeal thereof in the United Circuit Court of Appeals for the Ninth Circuit be and hereby is enlarged and extended ninety days from the 1st day of October, 1913.

CHAS. E. WOLVERTON,

Judge.

And afterwards, to wit, on the 10 day of October, 1913, there was duly filed in said Court, an Order in words and figures as follows, to wit:

[Order Certifying Up Original Exhibits.]

(Title.)

Now at this day, it appearing that certain exhibits introduced at the trial of this cause in this Court are of such nature as to require inspection by the Appel-

late Court on the appeal of this cause to the United States Circuit Court of Appeals, Ninth Circuit;

IT IS ORDERED that there be certified up with the record to the said United States Circuit Court of Appeals on said appeal plaintiff's exhibits "One" and "Two," and defendant's exhibits "A," "B," "C," "D," "E" and "F."

R. S. BEAN,
Judge.

